

**Supporting Statement for the Information Collection Request for the
Final NPDES and ELG Regulatory Revisions for
Concentrated Animal Feeding Operations**

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ACRONYM LIST

AFO(s) – animal feeding operation(s)
BLS – Bureau of Labor Statistics
BMP(s) – best management practice(s)
BPJ – best professional judgement
C.F.R. – Code of Federal Regulations
CAFO(s) – concentrated animal feeding operation(s)
CDC – Centers for Disease Control
CWA – Clean Water Act
DMR – Discharge Monitoring Report
ELG – Effluent Limitations Guidelines
EPA – Environmental Protection Agency
FDA – Food and Drug Administration
GS – General Schedule
ICR – information collection request
MOA – Memorandum of Agreement
NAICS – North American Industry Classification System
NASS – National Agricultural Statistics Service
NCBA – National Cattlemen's Beef Association
NMP – nutrient management plan
NMPF – National Milk Producers Federation
NODA – notice of data availability
NOI – notice of intent
NPDES – National Pollutant Discharge Elimination System
NPPC – National Pork Producers Council
NPTD – no potential to discharge
NRDC – Natural Resources Defense Council
NTF – National Turkey Federation
O&M – operation and maintenance
OMB – Office of Management and Budget
OPM – Office of Personnel Management
PCS – Permit Compliance System
SBA – Small Business Administration
SERs – Small Entity Representatives
SIC – Standard Industrial Classification
SOC – Standard Occupational Classification
STORET – Storage and Retrieval (EPA database)
U.S. EPA – United States Environmental Protection Agency
U.S.C. – United States Code
UEP/UEA – United Egg Producers and the United Egg Association
USDA – United States Department of Agriculture
USGS – United States Geological Survey

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1 IDENTIFICATION OF THE INFORMATION COLLECTION

1a Title of the Information Collection

ICR: Final NPDES and ELG Regulatory Revisions for Concentrated Animal Feeding Operations

EPA ICR: 1989.02

OMB Control Number:

1b Short Characterization

This ICR provides an estimate of the information collection burden for respondents subsequent to the Environmental Protection Agency's (EPA or the Agency) final regulatory revisions to the National Pollutant Discharge Elimination System (NPDES) permit program for concentrated animal feeding operations (CAFOs) and the Effluent Limitations Guidelines (ELG) for Feedlots. It was prepared according to guidance prepared by EPA (1999).

The Federal Water Pollution Control Act (1972), also known as the Clean Water Act (CWA), prohibits the discharge of pollutants from a point source to waters of the United States except for discharges authorized and regulated by the NPDES permit program established by Section 402(a). Section 308 of the CWA requires that EPA collect from dischargers any information that may be reasonably required to carry out the objectives and provisions of the CWA. Thus, point sources incur mandatory record keeping and reporting burdens when they apply for NPDES permits and in the course of complying with NPDES program requirements established by EPA.¹

Section 402(b) authorizes States (which includes U.S. Territories and Indian Tribes that have been approved in the same manner as a State) to administer their NPDES program once the Agency has approved a State program and is assured that it meets minimum federal requirements. As of June 2002, 44 States and one Territory (U.S. Virgin Islands) had received approval from EPA to administer the NPDES base program, which includes the federal requirements that are applicable to CAFOs (U.S. EPA, 2001). Of these, 43 are responsible for issuing NPDES permits to CAFOs (called "approved States" hereafter).² In the course of adopting, modifying, and administering their NPDES programs, approved States incur record keeping and reporting burdens to provide EPA with the information it needs to ensure that State programs meet the minimum requirements established by federal regulations and that approved State agencies have adequate authority to fully implement their programs.

CAFOs are classified as point sources in 40 C.F. R. Part 122 and are subject to the feedlot ELG revisions in 40 C.F.R. 412. The final rule revises these regulations in ways that will affect CAFO-related record keeping and reporting burdens. For instance, EPA expects the number of

¹ Nonfederal regulatory agencies may impose additional information collection requirements on regulated point sources. Because those collections exceed the federal requirement, the burdens incurred are not included in the estimate of burdens to meet federal information collection needs.

² EPA retains authority for NPDES discharge permits for agricultural facilities in Oklahoma; thus only 43 States are authorized to issue permits to CAFOs. EPA is not aware of any CAFOs in the U.S. Virgin Islands and, therefore, bases its burden analysis on the 43 approved States.

applicants for NPDES permit coverage to increase and States with NPDES programs will need to update their programs to incorporate regulatory changes. Most active ICRs that cover the NPDES program do not adequately reflect expected burdens following the rule's effective date, January 2003 and, furthermore, are scheduled to expire shortly thereafter. Consequently, this ICR enumerates record keeping and reporting burdens associated with NPDES permits for CAFOs and accounts for the majority of the total burden estimated for the 3-year period from January 1, 2003 to December 31, 2005. Some of the burden is already covered by the active ICR for Applications for National Pollutant Discharge Elimination System Discharge Permits and the Sewage Sludge Management Permits (EPA ICR No. 0226.15), which expires on April 30, 2003. This ICR excludes the record keeping and reporting burden for CAFOs already covered by ICR 0226.15 for the four-month period of overlap from January 1, 2003 through April 30, 2003. The excluded burden pertains to individual permit applications and NOIs for general permit coverage.

Information collected by the NPDES Program Director (for either an approved State or EPA) about waste management facilities and operating procedures will be used to document that a permittee is in compliance with permit requirements. Information will be collected using permit application forms and annual reports, and through compliance evaluation inspections. Permitting authorities enter application data into Permit Compliance System (PCS), the Agency's database for tracking permit compliance.

EPA estimates that the public burden for this information collection request includes an annual average of 1.89 million hours for all respondents including CAFO owners/operators and States. This estimate includes the time required to review instructions, search existing data sources, gather and maintain all necessary data, and complete and review the information collected. On average, there will be approximately 11,941 respondents and 100,879 responses per year and average annual capital and O&M costs will total \$7.9 million.

2 NEED FOR AND USE OF THE COLLECTION

2a Need / Authority for the Collection?

EPA has authority to undertake the information collection activities characterized in this document under Sections 308 and 402 of the CWA, and Title 33 Sections 1311, 1318, and 1342 [402 counterparts] of the United States Code (U.S.C.) (See Appendix 1). CAFOs are defined as point sources for purposes of the NPDES program (33 U.S.C. Sec. 1362). Under 33 U.S.C. Sec. 1311 and Sec. 1342, a CAFO must obtain an NPDES permit and comply with the terms of that permit, which may include appropriate conditions on data and information collection. Furthermore, 33 U.S.C. Sec. 1318 provides authority for information collection (i.e., record keeping, reporting, monitoring, sampling, and other information as needed), which applies to point sources including actual and potential dischargers.

EPA and approved States need the information generated by the final regulatory revisions that pertain to CAFOs to more fully and effectively implement CWA requirements. The final rule revises EPA's original ELG and NPDES regulations for CAFOs, which were promulgated in the mid-1970s, to meet the following goals.

1) Address reports of continued discharge and runoff of manure and nutrients from livestock and poultry farms.

In spite of existing regulatory controls, there are persistent reports of discharge and runoff of manure and manure nutrients from livestock and poultry farms. Pollutants associated with animal wastes include excessive nutrients (such as nitrogen and phosphorus), heavy metals, ammonia, organic matter, sediment, pathogens, antibiotics, and hormones. Such pollutants may contribute to severe oxygen depletion (hypoxia), algal blooms, fish kills, and the contamination of ground water sources of drinking water. The final revisions to the existing ELG and NPDES regulations for CAFOs are expected to mitigate future water quality impairment and the associated human health and ecological risks by reducing pollutant contributions from animal agriculture.

2) Update the existing regulations to reflect structural changes in these industries over the last few decades.

EPA's final revisions also address changes that have occurred in animal agricultural production in the United States since the development of the existing regulations. The continued trend toward fewer, but larger operations, coupled with greater emphasis on more intensive production methods and specialization, is concentrating more manure nutrients and other animal waste constituents within some geographic areas. This trend has coincided with increased reports of accidental large-scale spills from these facilities and has fueled concern that manure runoff is contributing to the overnutrification of certain vulnerable waterways in the United States.

3) **Improve effectiveness of the CAFO regulations.**

EPA's revisions of the existing regulations will improve their effectiveness. Continued reports of discharge and runoff from AFOs, in conjunction with evidence of mismanagement under some prevailing industry practices, highlights the need for revision of the existing regulations. Under the current regulatory framework, few of the estimated 15,400 CAFOs have NPDES permits. EPA's final revisions will ensure that CAFOs, as defined under the revised regulations, are permitted.

EPA needs to collect information from approved States to ensure that their NPDES programs implement the final rule. Under 40 C.F.R. 123.62(e), State NPDES programs must at all times be in compliance with federal regulations. When new federal requirements are enacted, States have one year to update their regulations to meet the new requirements. States have two years if they must also update statutes.

The final rule addresses other Agency obligations. It partially fulfills EPA's obligation to comply with the consent agreement entered in *NRDC v. Whitman*. The ELG for feedlots is one of three effluent limitations guidelines that the Agency is required to revise under the agreement. The consent agreement requires that EPA finalize regulations that revise the feedlot ELG as well as the NPDES regulations for CAFOs by December 15, 2002. Finally, in 1999, the USDA and EPA issued the *USDA/EPA Unified National Strategy for Animal Feeding Operations* (the "National Strategy"). The National Strategy — a key action item identified in the *1998 Clean Water Action Plan* — underwent extensive public review. The final rule is consistent with the final National Strategy.

2b Practical Utility / Users of the Data

EPA and approved State permitting authorities use the information routinely collected through NPDES applications and compliance evaluations in the following ways:

- to issue NPDES permits with appropriate limitations and conditions that will protect human health and the environment
- to update information in EPA's databases that permitting authorities use to determine permit conditions
- to calculate national permit issuance, backlog, and compliance statistics
- to evaluate national water quality
- to assist EPA in program management and other activities that ensure national consistency in permitting
- to assist EPA in prioritizing permit issuance activities
- to assist EPA in policy development and budgeting
- to assist EPA in responding to Congressional and public inquiries.

Other users of the data include regulated CAFOs and the general public. CAFOs will use the data they collect to improve operation efficiency and evaluate facility maintenance needs. The general public can use information collected through the NPDES permit process to support efforts to protect local environmental quality and quality of life.

3 NONDUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA

3a Nonduplication

The information collection pursuant to the regulatory changes is site-specific and, therefore, not available from existing sources. EPA has coordinated with USDA in developing the final regulatory changes and has used aggregated USDA data to the extent such data are relevant and available to EPA. Because USDA does not divulge site-specific data, EPA cannot obtain the site-specific information from USDA. Furthermore, no other Federal agency possesses such data.

As part of its overall CAFO initiative, EPA has undertaken efforts to identify existing sources of relevant information as well as to coordinate with other Federal agencies that collect information in the agricultural sector [e.g., USDA, United States Geological Survey (USGS), Food and Drug Administration (FDA), National Oceanic and Atmospheric Administration, Centers for Disease Control (CDC)] and States. To support development of the USDA/EPA Unified National Strategy for AFOs and these regulatory changes, EPA formed and administered a data and analysis group that included 18 representatives from EPA, USDA, and USGS. This group worked to identify and access existing sources of CAFO data. Although some useful general data were identified, including EPA and USDA information (e.g., STORET, 305(b) and 303(d) information), no other Federal agency has the facility-specific data needed. In addition, EPA utilized publicly available information to a significant extent. For example, EPA has developed a document entitled *State Compendium: Programs and Regulatory Activities Related to Animal Feeding Operations*, which characterizes CAFO regulations in all 50 States based on a variety of publicly available information sources.

There are a few national databases maintained by the Federal government that store some information about CAFOs. A search for relevant databases identified the following:

- EPA's Permit Compliance System (PCS) database
- USDA Census of Agriculture
- Agricultural Compliance Center AFO database (under development).

EPA's PCS database is used to store information about facilities that hold NPDES permits. It aids EPA in monitoring the compliance status of permitted facilities. PCS only holds data items associated with existing NPDES permits. It does not contain any site-specific information for CAFOs that are not permitted under the program, and information updates from permits renewed after the effective date are covered by this ICR. Therefore, this information collection is not duplicative of data in PCS.

USDA's National Agricultural Statistics Service (NASS) is responsible for maintaining a large amount of information on agricultural operations, including AFOs, through the Census of Agriculture, which is administered every five years. Although the Census of Agriculture asks operators for a headcount of animals on their facilities, it does not ask operators about the confinement of animals, and there are no Census questions about waste generation or waste management. Moreover, Census of Agriculture data are subject to restrictions with regard to

what type of data may be released, when, and to whom. Generally, facility level data may not be released. Therefore, the information in the Census of Agriculture database cannot fulfill the EPA's data needs for purposes of administering the NPDES program, and this information collection is not duplicative of the data available from NASS.

Finally, EPA's Office of Enforcement and Compliance Assurance is developing a database of AFOs through the Agricultural Compliance Assistance Center. This database, however, is only intended to provide the Federal and State agencies with an up-to-date count of AFOs and CAFOs across the United States and it will not provide other necessary information items regarding compliance status of facilities with the NPDES program.

3b Public Notice Required Prior to ICR Submission to OMB

A summary of the ICR was published as part of the proposed rule notice in the Federal Register on January 12, 2001. The notice included a request for comments on the content and impact of the proposed rule on the regulated community. Comments on the proposed rule were used to substantiate or refute the burden estimates for respondents. A summary of this ICR accompanies the final rule submission to OMB, as noted in the public notice for the submission.

3c Consultations

To facilitate regulation development, EPA has actively involved interested parties in the development of the final rule. As part of these efforts, EPA has provided many opportunities for input in this rulemaking process, including 11 public outreach meetings on the Draft Unified National AFO Strategy and a stakeholder conference call, including small entities. In addition, EPA meets with various members of the stakeholder community on a continuing basis. These meetings with environmental organizations, producer groups, and producers representing various agricultural sectors give EPA the opportunity to interact with and receive input from stakeholders about the Unified Strategy and the NPDES and ELG regulatory revisions. While most of these outreach activities have not targeted small entities explicitly, many have included small business participation.

In the fall of 1998, EPA and USDA conducted eleven public outreach meetings designed to allow public comment on the Draft USDA/EPA Unified National AFO Strategy. The meetings were held in the following cities: Tulsa, Oklahoma; Harrisburg, Pennsylvania; Ontario, California; Madison, Wisconsin; Seattle, Washington; Des Moines, Iowa; Chattanooga, Tennessee; Indianapolis, Indiana; Fort Worth, Texas; Denver, Colorado; and Annapolis, Maryland. Each meeting included a pre-meeting between State officials, regional officials, EPA, and USDA representatives to discuss the draft strategy and water quality issues related to CAFOs. All participants in the public sessions were given the opportunity to provide their comments to a panel comprising EPA, USDA, and local representatives. EPA and USDA used these comments to develop the final National Strategy. EPA also considered these comments in developing the various regulatory options for CAFOs that are the subject of this ICR. The transcripts of these meetings are available at the EPA Web Site (www.epa.gov/owm/afo.htm).

EPA conducted over 50 site visits to learn more about swine and poultry animal feeding operations and waste management practices. EPA visited 6 broiler, 12 layer, and 6 turkey

facilities in Georgia, Arkansas, North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, Ohio, Indiana, and Wisconsin. EPA visited approximately 30 swine facilities in North Carolina, Pennsylvania, Ohio, Iowa, Minnesota, Texas, Oklahoma, and Utah. These facilities were chosen with the assistance of the National Pork Producers Council, United Egg Producers, United Egg Association, National Turkey Federation, National Resources Defense Council, the Clean Water Network, university experts, State Co-op and extension services, and State and EPA regional representatives. During these site visits, EPA also visited locations demonstrating centralized treatment or new and innovative technologies. EPA has also attended USDA-sponsored farm tours, as well as tours offered at industry, academic, and government conferences.

Many organizations have actively participated in developing revisions to the swine and poultry effluent guidelines by assisting in site visit selection, submitting supplemental data, reviewing EPA's draft descriptions of the industry and waste management practices, and participating in or hosting industry meetings with EPA. The National Pork Producers Council (NPPC), United Egg Producers and the United Egg Association (UEP/UEA), National Turkey Federation (NTF), and the National Chicken Council are trade associations that represent the swine and poultry industries. NPPC is a marketing organization and trade association made up of 44 affiliated state pork producer associations. The UEP/UEA undertakes programs in the following areas: price discovery; production and marketing information; unified industry leadership; USDA relationships; Washington presence; and promotional efforts. The NTF is the national advocate for all segments of the turkey industry, providing services and conducting activities which increase demand for its members' products. The National Chicken Council represents the vertically integrated companies which produce and process about 95 percent of the chicken market in the United States.

In addition, EPA visited approximately 60 sites to study beef and dairy animal feeding operations and waste management practices. EPA visited approximately 30 beef feedlots in Texas, Oklahoma, Kansas, Colorado, California, Indiana, Nebraska, and Iowa, and three veal operations in Indiana. The capacities of the beef feedlots varied from 500 to 120,000 head. EPA also visited approximately 25 dairies in Pennsylvania, Florida, California, Wisconsin, and Colorado, with the total mature dairy cattle at the operations ranging from 40 to 4,000 cows. EPA chose these facilities with the assistance of the National Cattlemen's Beef Association, National Milk Producers Federation, Western United Dairywomen, and State and EPA regional representatives.

Two organizations have actively participated in developing the beef and dairy effluent guideline by assisting in site visit selection, submitting supplemental data, reviewing EPA's draft documents presenting descriptions of the industry and waste management practices, and participating in or hosting industry meetings with EPA. The National Cattlemen's Beef Association (NCBA) and the National Milk Producers Federation (NMPF) are two trade associations that represent the beef and dairy industries. NCBA is a marketing organization and trade association for cattle farmers and ranchers. NMPF deals with milk quality and standards, animal health and food safety issues, dairy product labeling and standards, and legislation affecting the dairy industry. Other beef and dairy organizations have also provided assistance to EPA. For example, the Western United Dairywomen, a dairy organization in California, organized and participated in site visits and a conference call meeting with EPA. In addition, EPA contacted the American Veal Association to obtain further information on veal operations.

EPA distributed background information and materials to small business representatives on two separate dates — September 3, 1999 and September 9, 1999. On September 17, 1999, EPA held a conference call in Washington, D.C. for a pre-panel forum of small business representatives to provide input on key issues relating to the final regulatory changes to the NPDES permitting requirements for CAFOs. Small business representatives from the beef, dairy, swine, poultry, and exotic animal livestock industries participated in the call. Following the conference call, at EPA's request, 19 of the 41 small business advisors and national organizations invited to participate provided written comments.

The Small Business Advocacy Review Panel for the proposed rule was convened on December 16, 1999. On December 28, 1999, the Panel distributed an outreach package to a group of small entity representatives (SERs), which included many of the participants in EPA's September 17, 1999 outreach conference call. The SERs were asked to review the information package and provide verbal comments to the Panel during a January 5, 2000 conference call, which included participation by 22 SERs. During this conference call, SERs were also encouraged to submit written comments. SERs were given an additional opportunity to make verbal comments during a second conference call which was held on January 11, 2000 and included participation by 20 SERs.

On January 12, 2001 (66 Fed. Reg. 2959), EPA published a proposal to revise and update the NPDES provisions that define which operations are CAFOs and establish permit requirements, and the effluent guidelines, for feedlots (beef, dairy, swine and poultry subcategories). In the proposal, EPA specifically solicited comment on 28 issues (66 Fed. Reg. 3133), in addition to general comment solicitation on all aspects of the proposed regulations. EPA received comments from various stakeholders, including State, Tribal and Federal regulatory authorities, environmental groups, industry groups, land grant university researchers, and private citizens. EPA considered changes to aspects of the rule in response to the data and comments provided.

On November 21, 2001 (66 Fed. Reg. 58556), EPA published a notice of data availability (NODA). The NODA made available data and comments associated with the proposed rule. In the NODA, EPA solicited comment on the issues and information provided in the notice and in the administrative record supporting the notice. Again, EPA received comments from various stakeholders, including State, Tribal and Federal regulatory authorities, environmental groups, industry groups, land grant university researchers, and private citizens. This ICR reflects the comments received.

On July 17, 2002 EPA signed a new NODA, which was published on July 23, 2002 (67 Fed. Reg. 48099). The public will have 30 days to comment on the new data and methods. Their comments will be considered for the final rule.

3d Effects of Less Frequent Collection

EPA has made every effort to establish NPDES permit and associated information collection requirements that minimize the burden on respondents while promoting the protection of water quality. NPDES permit applications are the primary form of information collection for regulated CAFOs and these facilities must reapply for NPDES permits before their existing permits expire. Section 402(p) of the CWA requires that NPDES permits be issued for fixed terms with a

maximum term of five years, thereby disallowing less frequent collection than anticipated by this ICR. Compliance evaluation inspections [and Section 308 requests] are conducted as needed to assure compliance and less frequent collection would hamper compliance assurance efforts. Furthermore, most inspections will be conducted by approved States, which means that collection frequency is largely a matter of State discretion. Finally, State requests for approval of NPDES program modifications prompted by the final CAFO rule are expected to be a one-time information collection for the Agency.

3e General Guidelines

This information collection complies with Paperwork Reduction Act guidelines (5 C.F.R. 1320.5(d)(2)), except for the requirement for CAFOs to maintain the records on-site for five years to demonstrate permit compliance. The records that this requirement pertains to are listed below in Section 4b(i).

3f Confidentiality

CAFOs must keep nutrient management plans on site and make them available to the permitting authority on request. These plans may contain confidential business information. When this is the case, the respondent can request that such information be treated as confidential. All confidential data will be handled in accordance with 40 C.F.R. 122.7, 40 C.F.R. Part 2 (40 C.F.R. 2.201 et seq.), and EPA's Security Manual Part III, Chapter 9, dated August 9, 1976.

Whenever possible, EPA encourages public involvement in the NPDES regulatory process. However, EPA also recognizes the legitimate concerns of operators regarding protection of confidential business information and potential delays in processing of permit applications and NOIs.

3g Sensitive Questions

This ICR does not ask AFO or CAFO operators sensitive questions concerning private matters (e.g., religious beliefs).

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4 THE RESPONDENTS AND THE INFORMATION REQUESTED

This ICR covers the information collection activities expected to occur over the three-year ICR approval period from January 1, 2003 through December 31, 2005. During this period, CAFO and approved State respondents will collect and report information to obtain NPDES permit coverage and meet permit conditions.

4a Respondents/NAICS Codes

The two categories of respondents are the owners or operators of CAFOs and the 43 approved States that issue permits to CAFOs.

EPA categorizes CAFOs based on the primary type of animal produced on the operation. Table 4-1 lists the major categories along with their North American Industry Classification System (NAICS) codes, and the corresponding four-digit Standard Industrial Classification (SIC) codes. Note that some industry classification codes may overlap more than one of the categories defined by EPA under the final regulations. For example, swine of any size have the same NAICS or SIC codes.

Table 4-1 also provides the animal thresholds adopted in the final rule. EPA uses these thresholds to distinguish which animal feeding operations (AFOs) are CAFOs. Under the final rule, all large AFOs are defined as CAFOs. An AFO in the medium size category is defined as a CAFO if it meets one of two discharge criteria:

- pollutants are discharged to U.S. waters through a man-made ditch, flushing system, or other similar man-made device
- pollutants are discharged directly into U.S. waters that originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the confined animals.

An AFO in the smallest size category may become a CAFO through designation only following an on-site inspection. Medium AFOs that are not defined CAFOs, may be designated as CAFOs. The final rule does not change the requirements for designation.

All CAFOs have a duty to apply for a NPDES permit either by submitting a notice of intent (NOI) to be covered by a general permit or by submitting an application for an individual permit.

Using data from the 1997 Census of Agriculture, NASS bulletins, and industry data sources and comments, EPA estimated that there are approximately 238,000 AFOs in the United States (U.S. EPA, 2002c). Of those, EPA estimates that almost 15,400 would meet the definition of a CAFO or be designated as a CAFO. Table 4-2 provides an accounting of the number of CAFOs by animal type as well as operation size.

Table 4–1. CAFO Standard Industrial Classification Codes and Size Thresholds

NAICS Code (SIC Code)	Animal Type	Size Thresholds		
		Large	Medium	Small
112111 (0212, 0241), 112112 (0211)	Beef cattle, heifers, calves or veal for either slaughter or replacement	>1,000	300-1,000	<300
112111, 112120 (0241)	Dairy cattle — mature dairy cattle (whether milked or dry cows) and heifer replacement	>700	200-700	<200
112210 (0213)	Swine — each weighing over 25 kilograms — or approximately 55 pounds	>2,500	750-2,500	<750
	Immature swine — each weighing less than 25 kilograms, or approximately 55 pounds	>10,000	3,000-10,000	<3,000
112310 (0252)	Chickens — laying hens, using liquid manure handling system	>30,000	9,000-30,000	<9,000
112310 (0252)	Chickens — laying hens, if other than liquid manure handling system	>82,000	25,000- 82,000	<25,000
112320 (0251)	Chickens other than laying hens — broilers, fryers and roasters, if other than liquid manure handling system	>125,000	37,500- 125,000	<37,500
112330 (0253)	Turkeys	>55,000	16,500- 55,000	<16,500
112390 (0259)	Ducks , wet manure handling	>5,000	1,500- 5,000	<1,500
	Ducks, dry manure handling	>40,000	12,000- 40,000	<12,000
112410 (0214)	Sheep or lambs	>10,000	3,000-10,000	<3,000
112920 (0272)	Horses	>500	150-500	<150

Table 4–2. Estimated Number of CAFOs by Size and Animal Type

Animal Type	Defined CAFOs		Designated CAFOs	
	Large CAFOs	Medium CAFOs	Medium CAFOs	Small CAFOs
Beef	1,766	174	13	2
Veal	12	4	0	0
Heifer	242	230	3	0
Dairy	1,450	1,949	28	2
Swine	3,924	1,485	50	2
Layers (wet)	383	26	1	1
Layers (dry)	729	24	7	1
Broilers	1,632	520	50	2
Turkeys	388	37	8	2
Ducks	21	4	0	0
Horses	195	0	0	0
Total	10,742	4,453	160	12

Source: U.S. EPA (2002c)

4b Information Requested

4b(i) Data Items, Including Record Keeping Requirements

CAFO Data Items

CAFO Application for NPDES Permit. All CAFO operations have a duty to apply for an NPDES permit by preparing and submitting either an application for an individual NPDES permit for CAFOs under 40 C.F.R. 122.21 or a Notice of Intent for coverage under the general NPDES permit for CAFOs under 40 C.F.R. 122.28.

The individual permit application for CAFOs comprises two standard NPDES forms: Forms 1 and 2B. On Form 1, applicants provide basic information necessary to all EPA permit programs, including name, address, type of facility, and number of outfalls. Applicants must also submit topographic maps and lists of all EPA and State permits presently held. Most facilities applying for a NPDES permit submit Form 1 along with a second, industry-specific form. As a result of the final rule, CAFOs will provide the following types of information on Form 2B:

- the name of the owner or operator [40 C.F.R. 122.21(i)(1)(i)]
- the facility location and mailing addresses [40 C.F.R. 122.21(i)(1)(ii)]
- latitude and longitude of the production area (entrance to production area) [40 C.F.R. 122.21(i)(1)(iii)]
- a topographic map of the geographic area in which the CAFO is located showing the specific location of the production area in lieu of the requirements of 40 C.F.R. 122.21(f)(7) [40 C.F.R. 122.21(i)(1)(iv)]
- specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other) [40 C.F.R. 122.21(i)(1)(v)]

- the type of containment (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons) [40 C.F.R. 122.21(i)(1)(vi)]
- the total number of acres under control of the applicant available for land application of manure, litter, and process wastewater [40 C.F.R. 122.21(i)(1)(vii)]
- estimated amount of manure, litter, and process wastewater generated per year (tons/gallons) [40 C.F.R. 122.21(i)(1)(viii)]
- estimated amount of manure, litter, and process wastewater transferred to other persons per year (tons/gallons) [40 C.F.R. 122.21(i)(1)(ix)]
- For CAFOs that must seek coverage under a permit after December 31, 2006, certification that a nutrient management plan has been completed and will be implemented upon the date of permit coverage [40 C.F.R. 122.21(i)(1)(x)].

The NOI pertains to coverage under a general permit, which a permitting authority uses to cover multiple permittees requiring similar permit conditions within a designated geographic area. Under the final rule, completing the NOI requires that CAFO applicants provide the information specified in 40 C.F.R. 122.21(i)(1), as listed above (i.e., the NOI requests the same information as the application form for an individual permit).

No Potential To Discharge Requests. In lieu of requesting permit coverage, an operation can request a determination of “no potential to discharge.” To do this, the CAFO owner or operator must submit any information that would support such a determination, within the time frame provided by the permit authority and in accordance with paragraphs 40 C.F.R. 122.23(g). The request must include all of the information specified in 40 C.F.R. 122.21(f) and (i)(1)(i) through (ix) (listed above under CAFO Application for NPDES Permit). The permitting authority has discretion to require additional information to supplement the request, and may also gather additional information through inspection of the CAFO [40 C.F.R. 122.23(f)(2)].

EPA believes that the standard to qualify for this exemption is high and relatively few, if any, CAFOs would make the request. Therefore, for the purpose of estimating ICR burdens, EPA assumes that all CAFOs apply for permits. This is particularly likely to be the case in light of the fact that the making the request does not eliminate or postpone a CAFOs duty to apply for a permit and most CAFOs that do not already have a permit will need to apply in the first ICR year.

Requirement to Develop and Implement a Nutrient Management Plan. The NMP is a new data item required by the final rule. At a minimum, an NMP must include best management practices and procedures necessary to implement applicable effluent limitations and standards [40 C.F.R. 122.42(e)(1)]. Permitted CAFOs must have their nutrient management plans developed and implemented by December 31, 2006; CAFOs that seek to obtain coverage under a permit after December 31, 2006 must have a nutrient management plan developed and implemented upon the date of permit coverage [40 C.F.R. 122.42(e)(1)]. The nutrient management plan must, to the extent applicable:

- ensure adequate storage of manure and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities [40 C.F.R. 122.42(e)(1)(i)]
- ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in any liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities [40 C.F.R. 122.42(e)(1)(ii)]
- ensure that clean water is diverted, as appropriate, from the production area [40 C.F.R. 122.42(e)(1)(iii)]
- prevent direct contact of confined animals with waters of the United States [40 C.F.R. 122.42(e)(1)(iv)]
- ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants [40 C.F.R. 122.42(e)(1)(v)]
- identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States [40 C.F.R. 122.42(e)(1)(vi)]
- identify protocols for appropriate testing of manure, litter, process wastewater, and soil [40 C.F.R. 122.42(e)(1)(vii)]
- establish protocols to land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater [40 C.F.R. 122.42(e)(1)(viii)]
- identify specific records that will be maintained to document the implementation and management of the minimum elements described above [40 C.F.R. 122.42(e)(1)(ix)].

Record Keeping Requirements. CAFOs must keep, maintain for five years, and make available to the Director, upon request, the following records:

- all applicable records identified pursuant to 40 C.F.R. 122.42(e)(1)(ix) [40 C.F.R. 122.42(e)(2)(i)(A)]
- all CAFOs subject to 40 C.F.R. Part 412 must comply with record keeping requirements as specified in 40 C.F.R. 412.37(b) and (c), and 40 C.F.R. 412.47(b) and (c) [40 C.F.R. 122.42(e)(2)(i)(B)], which are listed below:
(Note: Although all citations below are to 40 C.F.R. 412.37, 40 C.F.R. 412.47(b) applies all 40 C.F.R. 412.37(b) conditions for CAFOs subject to Subpart C to CAFOs subject to Subpart D and 40 C.F.R. 412.47(c) applies all 40 C.F.R. 412.37(c) conditions for CAFOs subject to Subpart C to CAFOs subject to Subpart D.)
 - each CAFO must maintain on-site for a period of five years from the date they are created a complete copy of the information required by 40 C.F.R. 122.21(i)(1) and 40 C.F.R. 122.42(e)(1)(ix) and the records specified in 40 C.F.R. 412.37(b)(1) through (b)(6) [40 C.F.R. 412.37(b)], which are listed below:
 - records documenting the inspections required under 40 C.F.R. 412.37(a)(1) [40 C.F.R. 412.37(b)(1)]
 - weekly records of the depth of the manure and process wastewater in the liquid impoundment as indicated by the depth marker under 40 C.F.R. 412.37(a)(2) [40 C.F.R. 412.37(b)(2)]

- records documenting any actions taken to correct deficiencies required under 40 C.F.R. 412.37(a)(3); deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate correction [40 C.F.R. 412.37(b)(3)]
- records of mortalities management and practices used by the CAFO to meet the requirements of 40 C.F.R. 412.37(a)(4) [40 C.F.R. 412.37(b)(4)]
- records documenting the current design of any manure or litter storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity [40 C.F.R. 412.37(b)(5)]
- records of the date, time, and estimated volume of any overflow [40 C.F.R. 412.37(b)(6)]
- each CAFO must maintain on-site a copy of its site-specific nutrient management plan; each CAFO must maintain on-site for a period of five years from the date they are created a complete copy of the information required by 40 C.F.R. 412.4 and 40 C.F.R. 122.42(e)(1)(ix) and the records specified in 40 C.F.R. 412.37(c)(1) through (c)(10) [40 C.F.R. 412.37(c)], which are listed below:
 - expected crop yields [40 C.F.R. 412.37(c)(1)]
 - the date(s) manure, litter, or process waste water is applied to each field [40 C.F.R. 412.37(c)(2)]
 - weather conditions at time of application and for 24 hours prior to and following application [40 C.F.R. 412.37(c)(3)]
 - test methods used to sample and analyze manure, litter, process waste water, and soil [40 C.F.R. 412.37(c)(4)]
 - results from manure, litter, process waste water, and soil sampling [40 C.F.R. 412.37(c)(5)]
 - explanation of the basis for determining manure application rates, as provided in the technical standards established by the Director [40 C.F.R. 412.37(c)(6)]
 - calculations showing the total nitrogen and phosphorus to be applied to each field, including sources other than manure, litter, or process wastewater [40 C.F.R. 412.37(c)(7)]
 - total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations for the total amount applied [40 C.F.R. 412.37(c)(8)]
 - the method used to apply the manure, litter, or process wastewater [40 C.F.R. 412.37(c)(9)]
 - date(s) of manure application equipment inspection [40 C.F.R. 412.37(c)(10)]
- a copy of the CAFO's site-specific NMP must be maintained on site and made available to the Director upon request [40 C.F.R. 122.42(e)(2)(ii)].

Requirements Related to Transfer of Manure or Process Wastewater to Other Persons.

Prior to transferring manure, litter, or process wastewater to other persons, Large CAFOs must provide the recipient of the manure, litter, or process wastewater with the most current nutrient analysis consistent with the requirements of 40 C.F.R. 412. Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure or process wastewater transferred to a third party [40 C.F.R. 122.42(e)(3)].

CAFO Annual Reporting Requirements. CAFO permittees must submit an annual report to the Director that includes the following [40 C.F.R. 122.42(e)(4)]:

- the number and type of animals, whether in open confinement and housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other) [40 C.F.R. 122.42 (e)(4)(i)]
- estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons) [40 C.F.R. 122.42 (e)(4)(ii)]
- estimated amount of total manure, litter, and process wastewater transferred to another person by the CAFO in the previous 12 months (tons/gallons) [40 C.F.R. 122.42 (e)(4)(iii)]
- total number of acres for land application covered by the NMP developed in accordance with 40 C.F.R. 122.43(e)(1) [40 C.F.R. 122.42 (e)(4)(iv)]
- total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous 12 months [40 C.F.R. 122.42 (e)(4)(v)]
- summary of all manure, litter, and process wastewater discharges from production areas that have occurred in the previous 12 months, including date, time, and approximate volume [40 C.F.R. 122.42 (e)(4)(vi)]³
- a statement indicating whether the current version of the CAFO's NMP was developed or approved by a certified nutrient management planner [40 C.F.R. 122.42(e)(4)(vii)].

State Data Items

State NPDES Program Modification Request. Approved State NPDES programs must comply with the final federal rule, and many States will probably need to modify their existing State NPDES regulations in order to achieve full compliance. Federal regulations specifying program revision are found in 40 C.F.R. 123.62. These regulations require the State to keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures or priorities [40 C.F.R. 123.62(a)]. To accomplish State program revision, State agencies must provide EPA with a modified program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances [40 C.F.R. 123.62(b)(1)]. These may include relevant statutes, regulations, and guidance, copies of permit application forms, permit forms, and reporting forms, and relevant tribal agreements.

No Potential To Discharge Determination. According to 40 C.F.R. 122.23(f)(3) the permit authority must prepare a preliminary determination and a statement of basis or fact sheet in response to requests for the no potential to discharge exemption. The permit authority would also need to prepare a public notice, respond to comments, and issue a final determination.

³ Discharges that could result in significant impacts to the environment or human health must still be reported at the time of the discharge event in a non-compliance report. Since timely reporting is essential in these instances, separate regulations have been established in 40 C.F.R. 122.41 for the reporting of bypasses or upsets. Burden and costs for this type of non-compliance reporting have been analyzed in the ICR for the National Pollutant Discharge Elimination System (NPDES)/Compliance Assessment/Certification Information (ICR No. 1427.06).

State Record Keeping and Reporting. States requirements to maintain NPDES permit records for each permitted CAFO under their jurisdiction will be specified in each State's Memorandum of Agreement (MOA) with EPA. Federal regulations pertaining to the Memorandum of Agreement with the EPA Regional Administrator are contained in 40 C.F.R. 123.24.

4b(ii) Description of Respondent Activities

CAFO Activities

CAFO activities pertain mainly to preparing and submitting NPDES permit applications and collecting and keeping information required to demonstrate permit compliance. General startup and permit application activities include:

- reading and understanding the rule requirements
- completing and submitting NOI (for general permit coverage)
- completing and submitting Forms 1 and 2B (for an individual permit).

Activities required of all CAFOs to demonstrate and document permit compliance include:

- develop and maintain on-site a nutrient management plan
- prepare and submit annual reports
- maintain records to document implementation of the NMP

Additional activities required of Large CAFOs to demonstrate and document permit compliance include:

- collect representative manure, litter, and process wastewater samples
- collect representative soil samples
- inspect manure, litter, and/or process wastewater application equipment at a minimum of once per year
- collect information for transfers of manure, litter, or process wastewater to other people
- maintain production area and land application area records.

Although Small and Medium CAFOs are not subject to the information collection and record keeping requirements in 40 C.F.R. 412 Subparts C and D, it is possible that many of the activities (except the transfer records) listed therein may be performed as part of the data collection and record keeping to document implementation of the NMP. Furthermore, permitting authorities may choose to apply the ELG requirements for Large CAFOs to Small and Medium CAFOs. Therefore, for the purpose of estimating burden for this ICR, EPA uses the burden estimates for activities that expressly apply to Large CAFOs to also estimate the burdens for Small and Medium CAFOs.

In addition to the activities performed on a regular basis, EPA assumes that CAFO owners or operators will need to participate in any on-site inspection conducted by the permit authority. This represents an information collection burden because the purpose of the inspection is to collect information regarding permit compliance.

CAFO owners or operators will also incur capital and operating costs to collect information needed to document compliance. Capital expenditures include:

- purchase of a soil auger for sampling
- purchase of a manure sampler
- installation of a depth marker.

Recurring or O&M expenditures include:

- soil sample analysis
- manure sample analysis
- other direct costs for record keeping.

For the purpose of this ICR, EPA assumed that no CAFOs incur burden to make an optional request for an exemption from permitting on the basis of No Potential To Discharge. Thus, all CAFOs incur permit-related burdens, which would most likely overstate burdens for any CAFO that makes a request. The analysis in this ICR also reflects the assumption that no CAFO subject to the discharge limitations in 40 C.F.R. 412 Subparts C or D request a permit effluent limitation based on either Voluntary Alternative Performance Standards in 40 C.F.R. 412.31(a)(2) or Voluntary Superior Environmental Performance Standards in 40 C.F.R. 412.46(d).

State Activities

State NPDES Program Modification Request. Subsequent to making program revisions to implement the final rule, States will need to compile the information listed in 4b(i) of this Supporting Statement to submit a request for program modification to the EPA.

General Permit Activities. State activities associated with the development or revision of a general permit include:

- modifying the general permit to incorporate final rule requirements in accordance with 40 C.F.R. 123.25(a)(22) and 40 C.F.R. 122.62
- giving public notice in accordance with 40 C.F.R. 123.25(a)(27) and 40 C.F.R. 123.25(a)(33) and responding to comments in accordance with 40 C.F.R. 123.25(a)(31) and 40 C.F.R. 123.25(a)(34)
- holding public hearings(s) in accordance with 40 C.F.R. 123.25(a)(30)
- submitting the modified permit to EPA for approval in accordance with 40 C.F.R. 123.62
- reviewing NOIs for completeness and recording NOI information.

Individual Permit Activities. In accordance with 40 C.F.R. 123.25, approved States will incur burdens to perform the following activities for CAFOs that submit individual permits:

- reviewing the permit application for completeness
- providing public notice of receipt of applications and responding to comments
- holding public hearing(s), as necessary
- issuing the individual permit.

Compliance Evaluation Activities. Approved States will incur burdens to perform the following activities to ensure compliance with State permit programs:

- inspecting permitted CAFOs in accordance with 40 C.F.R. 123.26(b)
- reviewing annual reports submitted by permitted CAFOs under 40 C.F.R. 122.42(e)(4).

No Potential To Discharge Determinations. Large CAFOs that can demonstrate that they have no potential to discharge determination (NPTD) manure or process wastewater to waters of the United States may request an exemption from NPDES permitting. The permit authority, upon request, may make a case-specific determination that a Large CAFO has no potential to discharge. In making this determination, the permit authority must consider the potential for discharges from both the production area and any land application areas and any record of prior discharges by the CAFO. In no case may the CAFO be determined to have “no potential to discharge” if it has had a discharge within the 5 years prior to the date of the request [40 C.F.R. 122.23(f)(1)].

As noted above, EPA does not anticipate that States will incur burden to make such determinations and, therefore, assumes for this ICR that all CAFOs request coverage under an NPDES permit. EPA believes that the State burden to administer a permit would be higher in the long run compared to a one-time burden to make a determination. Thus, the burden estimates in this ICR potentially overstate State burden in the event an operation decides to request an exemption.

Voluntary Alternative Performance Standards. Large CAFOs can request alternative performance standards in lieu of the discharge limitations in 40 C.F.R. 412 Subparts C and D [40 C.F.R. 412.31(a)(2) and 40 C.F.R. 412.46(d), respectively]. EPA does not have information to estimate how many operations, if any, will submit such a request. The burden to review the request would be site-specific, depending on the basis for the request and the information provided by the CAFO operator. Because this is an uncertain and infrequent burden, EPA does not include this burden in its analysis.

5 THE INFORMATION COLLECTED — AGENCY ACTIVITIES, COLLECTION METHODOLOGY, AND INFORMATION MANAGEMENT

5a Agency Activities

EPA has permitting responsibilities in the seven States where it is the permitting authority for CAFOs. In those States, the Agency's activities would be similar to the activities described for authorized States [see Section 4b(ii)].

In addition, the Agency will evaluate the requests for program modifications submitted by approved States. In order to implement the final rule, States will submit an NPDES program modification. In accordance with existing NPDES modification process, EPA will review the modification. The review process will vary by State. For a review, EPA may perform any or all of the following activities:

- review State NPDES program modification and determine whether or not the proposed revisions are substantial enough to provide opportunity for public comment [40 C.F.R. 123.62(b)(2)]
- for substantial program modifications, give public notice and provide an opportunity for comment; notice shall be mailed to interested persons and published in the Federal Register and in newspapers [40 C.F.R. 123.62(b)(2)]
- hold public hearings, if necessary [40 C.F.R. 123.62(b)(2)]
- approve or disapprove of program modifications [40 C.F.R. 123.62(b)(3)]
- prepare and publish public notice of EPA's final determination in the Federal Register for approval of substantial program modifications, or deliver notice of approval of non-substantial program modifications by letter to the State Governor or his designee [40 C.F.R. 123.62(b)(4)].

5b Collection Methodology and Management

CAFO respondents will submit the requested information to their NPDES permitting authority. EPA will manage a portion of the information collected electronically. As under the existing NPDES program, respondent data pertaining to facilities permitted under the revised regulations would be catalogued in the automated Permit Compliance System (PCS) database. The PCS database is a national database that contains information on permit issuance, permit limits and monitoring, and other facility information. The information provided on permit application forms or NOI forms will be entered into PCS.

5c Small Entity Flexibility

The current NPDES program distinguishes Small CAFOs based on the number or concentration of animals. Small, medium, and large operations are defined in Table 4-1. The revised rule substitutes head count thresholds for the existing rule's animal unit thresholds for each type of animal being regulated under the rule.

Whereas EPA establishes thresholds based on the number of animals, the Small Business Administration (SBA) uses revenue-based thresholds to distinguish small agricultural operations from larger operations. Consequently, EPA developed a model to convert the SBA's revenue thresholds to the number of animals by sector. EPA used the SBA's revenue-based definitions (except for laying hens) and data from USDA and the industry for this effort. The SBA and EPA thresholds are shown for each sector in Table 5–1. A comparison of the SBA-based animal thresholds with EPA's animal thresholds indicates that most medium and Small CAFOs are small entities and some Large CAFOs will be small entities as well.

Table 5–1. SBA and EPA Small Business Thresholds for Animal Sectors

NAICS Code (SIC Code)	Animal Sector	SBA Threshold (Revenue in Millions)¹	Corresponding Animal Threshold (Number of Animals)
112112 (0211)	Beef cattle feedlots	\$1.5	1,400
112111, 112120 (0241)	Dairy farms and dairy heifer replacement production	\$0.75	300 ²
112210 (0213)	Hogs	\$0.75	2,100 ³
112310 (0252)	Chicken eggs	\$1.5 ⁴	61,000
112320 (0251)	Broiler, fryer, roaster chickens	\$0.75	375,000
112330 (0253)	Turkeys and turkey eggs	\$0.75	37,500

1. SBA thresholds effective February 22, 2002.

2. Mature dairy cattle.

3. Each weighing over 25 kilograms.

4. EPA consulted with SBA on the use of this alternative definition; the original threshold is \$9.0 million.

Note: Certain animal sectors (e.g., sheep and lambs, horses, and ducks) are not subject to ELG requirements, and EPA has not developed corresponding small business animal thresholds for those sectors.

In developing the regulatory changes, EPA's basic premise has been that the regulatory changes should focus on those operations posing the greatest risk to water quality and public health, in particular operations with large numbers of animals. Fewer than 5,000 of the approximately 230,000 small and medium AFOs nationwide will be affected by the final rule. This approach helps to reduce the burden of the CAFO regulations on small entities while striving to achieve the goals of the CWA.

Furthermore, as Section 6 shows, the burden estimates for many of the NPDES-related activities are relatively small. The final rule provides additional flexibility in that the ELG requirements apply to Large CAFOs; permitting authorities, which are mainly State agencies, will establish technology-based requirements for small and Medium CAFOs based on best professional judgement. Finally, the final rule provides regulatory relief for small and Medium CAFOs by not requiring them to record information for off-site manure transfers. Consequently, additional

flexibility for small entities would not have a large effect on their overall burden, but could reduce the effectiveness of the final regulatory changes and the effectiveness of the permitting authorities' oversight activities.

5d Collection Schedule

This ICR would cover the initial three-year period following promulgation of the rule, which is expected to be January 1, 2003 through December 31, 2005. During this period, EPA assumed that the authorized States would initially require one to two years to revise their regulations and develop new permit application forms. Thus, the schedule in Exhibit B in Appendix 3 shows State burden for start-up activities split between years 2003 and 2004. To simplify the burden analysis for processing permits, EPA assumed the schedule as the permit application schedule although there may be a lag between application and permit coverage because of State start-up activities.

Regarding CAFO activities, the approximately 15,400 facilities have been divided among four groups to develop the compliance schedule used to estimate ICR burdens:

- (1) the CAFOs that are expected to have permits prior to the effective date of the rule
- (2) the large and medium AFOs that meet the criteria for being defined as a CAFO prior to the effective date of the final rule and that should apply for coverage by the effective date
- (3) small and medium AFOs that will be designated CAFOs under the final rule, which has not revised designation requirements
- (4) the AFOs that are newly considered CAFOs under the revised size definitions, the addition of immature animal operations and poultry operations using dry waste storage, and the removal of the 25-year, 24-hour rainfall exemption.

Each currently permitted facility (group 1) will reapply for a permit in the final year of coverage under the existing permit. Thus, only the permittees seeking to renew their permits between January 1, 2003 and December 31, 2005 are included in this ICR (excluding the estimated overlap through April 30, 2003 with the active EPA ICR 0226.15). EPA assumed that the 2,520 permits issued prior to 2000 would be reissued in 2003 (50%) and 2004 (50%), and the 1,610 permits issued from January, 2000 to December, 2001 will be renewed in 2005 (50%) and 2006 (50%).

EPA assumed that all operations in group 2 will apply for coverage in the first year and comply with NPDES requirements beginning in that year, even though States may not be fully prepared to issue new individual permits or approve coverage under a new general permit until the second or third year. Consequently, this ICR incorporates annual record keeping and reporting burdens beginning in the first year for all group 2 (and group 1) CAFOs.

Designated CAFOs must apply for an NPDES permit within 90 days after receiving the notice of designation from the permit authority. EPA assumed that 20% of the approximately 170

operations it assumed might be designated will be designated in each of the first five years following the effective date of the final rule.

Operations in group 4 will be required to apply for coverage no later than December 31, 2006. Therefore, the newly regulated operations will need to apply for coverage by the third ICR year.

6 ESTIMATING THE BURDEN AND THE COST OF THE COLLECTION

This section describes how EPA estimated CAFO respondent, State, and Agency burden and costs for this ICR. Section 6(a) describes EPA's estimates of respondent burden for individual CAFOs and States. Section 6(b) describes the cost estimates for individual CAFOs and States. Section 6(c) describes the estimation of Agency burden and costs. Section 6(d) shows the total annual burden and costs across the entire universe of CAFOs and States affected during the ICR approval period. Section 6(e) summarizes the overall burden and cost estimates and provides annual averages over the three-year period.

Although other ICRs may include incidental burdens and costs associated with NPDES permitting activities for CAFOs (see Table 6-1), EPA determined that a clear overlap in record keeping and reporting burden occurs only with the "Applications for NPDES Discharge Permits and the Sewage Management Permits" (OMB NO: 2040-0086, EPA ICR: 0226.15; the "Applications ICR"). The overlap is excluded from this ICR to prevent double counting that burden. The overlap is minimal because the active ICR is scheduled to expire in 2003. The burden estimates in this ICR are consistent with previous estimates except where comments on the proposed rule and NODA and subsequent research indicated different estimates would be appropriate.

6a Estimating Respondent Burden

The summaries below provide brief descriptions of the CAFO and State activities and Tables 6-2 and 6-3 summarize the burden assumptions. Exhibits A.1 and A.2 provide additional information regarding the burden and cost assumptions, which were based on assumptions in the Economic Analysis (U.S. EPA, 2002c) and supporting documents (U.S. EPA, 2002a, b) for the final rule. Appendix 3 contains these exhibits.

CAFO Burden

Start-up activities are steps that a CAFO owner or operator must perform in preparation to comply with the information collection requirements of the final rule. Owners or operators that are potentially affected by the rule will need to familiarize themselves with the changes to the NPDES CAFO program to determine that they will need to apply for a permit and implement the effluent guideline requirements. This is a one-time burden. Based on best professional judgement, EPA assumes that it will only take CAFO operators three hours to read and understand the changes to relevant parts of 40 C.F.R. 122 and 40 C.F.R. 412 and related guidance.

Permit application activities involve completing and submitting either an NOI or an application for an individual permit. EPA's permit application burden estimate of nine hours for either permit type is based on the burdens in an active NPDES ICR ("Applications for NPDES Discharge Permits and the Sewage Management Permits," OMB NO: 2040-0086, EPA ICR: 0226.15). In that ICR, there is a 3-hour burden to complete Form 1 of an individual permit application burden, and a 6-hour burden to complete and submit Form 2B. Thus, the combined burden to complete the application for an individual permit is nine hours. That ICR contains a 1-hour burden to complete an NOI. Because EPA has revised the NOI for CAFOs such that it now requires the same amount of information provided on Forms 1 and 2B, EPA is using the same 9-hour assumption for NOIs too.

Table 6–1. Summary of Active ICRs Potentially Containing NPDES Burdens for CAFOs

Active NPDES ICRs	Information Collection Activities	CAFO Overlap
NPDES and Sewage Sludge Monitoring Reports OMB NO: 2040-0004 EPA ICR: 0229.15 Expiration Date: 02/28/2005	Permittees: Prepare DMRs, sewage sludge monitoring reports, and other monitoring reports Permit Authority: Review DMRs, sewage sludge monitoring reports, and other monitoring reports	ICR explicitly incorporates CAFOs covered by EPA’s non-stormwater general permits, but there is no CAFO burden because CAFOs don’t have effluent to monitor and report.
Pollutant Discharge Elimination System and Sewage Sludge Management State Programs OMB NO: 2040-0057 EPA ICR: 0168.07 Expiration Date: 04/30/2003	Approved States: Request NPDES Programs and modifications, conduct compliance inspections, and submit regular summary reports EPA: Review NPDES program requests, general permits, and provide oversight	There are too few program requests to address the final CAFO Rule. The 1,200 annual inspections for minors may include some CAFO inspections. General permit submittal to EPA for comment may cover some final CAFO rule burden.
National Pollutant Discharge Elimination System (NPDES) Modification and Variance OMB NO: 2040-0068 EPA ICR: 0029.07 Expiration Date: 04/30/2003	Permittee: Request permit modifications and variances Permit Authority: Review requests EPA: Provide oversight	CAFOs may be among the minor, nonmunicipal dischargers or general permittees included in this ICR.
Applications for NPDES Discharge Permits and the Sewage Management Permits OMB NO: 2040-0086 EPA ICR: 0226.15 Expiration Date: 04/30/2003	Permittee: Permit application record keeping Complete/submit individual permits (Forms 1 and 2B) Complete/submit NOI Respond to Section 308 requests Permit Authority: Review individual permits (Forms 1 and 2B) Review NOIs	Identified Overlap: ICR includes 135 individual CAFO permit applications per year and an unspecified number of NOI applications from CAFOs per year.
Information Collection Request for the National Pollutant Discharge Elimination System (NPDES) Compliance Assessment/ Certification Information OMB NO: 2040-0110 EPA ICR: 1427.06 Expiration Date: 02/29/2004	Permittee: Annual record keeping of monitoring and inspection data Prepare/submit compliance and noncompliance reports Permit Authority: Review reports	Record keeping burden may include CAFOs among 36,887 minor, nonmunicipal permittees. Reporting burden for compliance schedule and noncompliance may include CAFOs.

Table 6–2. Burden Estimates per CAFO by Activity

Activities	Frequency per CAFO	Burden Hours per Response¹
Read/Understand the Rule	one time	3
Permit Application Activities		
Complete/submit Notice of Intent for general permit	every 5 years	9
Complete/submit individual permit application	every 5 years	9
ELG Data Collection and Record Keeping Activities²		
Conduct visual inspections and maintain all ELG and NMP records	annual	93
Manure application equipment inspection	annual	4
Manure sampling	annual	2
Soil sampling	every 5 years	9
NPDES Record Keeping and Reporting Activities		
Develop/update nutrient management plan	every 5 years	52
Off-site transfer record keeping (Large CAFOs only)	annual	14
Complete/submit annual report to permitting authority	annual	1
Attend on-site inspection	per inspection	4

1. A response is the completion of an activity and the duration and frequency of responses can vary. For example, each of the following is considered a response: the one-time effort to read and understand the rule, submitting a permit application once every five years, or collecting ELG records throughout a year. The hour estimates have been rounded to the nearest hour for presentation. Burdens that are calculated as weighted averages across CAFO categories and sizes (e.g., soil sampling) have trailing decimal points in the model.

2. Although Small and Medium CAFOs are not subject to the ELG requirements in 40 C.F.R. 412, EPA assumes that the ELG burdens provide upper bound estimates for the burdens to document NMP implementation for Small and Medium CAFOs because many of the ELG information elements also provide documentation for the NMP and information for the annual report.

CAFO owners or operators will perform various activities to meet data collection and record keeping requirements. Large CAFO operators will conduct weekly visual inspections of the waste storage and storm water diversion facilities and daily inspections of water lines to identify maintenance needs. EPA assumed that these inspections can be primarily conducted in the course of every day operations and, therefore, they do not impose a substantial incremental burden on CAFOs beyond the need to document inspection findings. Manure application equipment must be inspected annually and the activity documented. Soil samples must be collected at least once every five years from all fields receiving manure and analyzed for nutrient content. Manure samples must be collected annually and analyzed for nutrient content. Large CAFOs must retain manure and soil sampling results on-site. Large CAFOs must also document other production area and land application area activities, as noted in above Section 4(b)(i). Rule support documents (U.S. EPA, 2002a, b) provide the basis for estimating burdens for these requirements, which are shown in Table 6-2.

Under the final rule, the ELG requirements are applicable to Large CAFOs; permit authorities must use best professional judgement (BPJ) to develop the effluent limitation conditions and associated record keeping requirements for all other CAFOs. For the purpose of estimating the social cost of the final rule, EPA assumed that the ELG record keeping and reporting

requirements for Small and Medium CAFOs would be comparable to those specified for Large CAFOs. Thus, EPA applied these ELG burdens to all CAFOs in its social cost analysis. EPA has adopted the same approach to estimating the ELG burden for this ICR. This approach is reasonable because Small and Medium CAFOs are required to identify and maintain records to document their NMP implementation and the types of records required by 40 C.F.R. 412 Subparts C and D can provide such documentation. Furthermore, many of these records will also assist preparation of annual reports, resulting in a minimal burden for that activity. Therefore, EPA used the same burden estimates for CAFOs of all sizes, although the ELG-related burden estimates in Table 6-2 may be upper bound estimates for Small and Medium CAFOs.

To comply with permit requirements, CAFO operators will need to develop a nutrient management plan that contains the minimum measures specified in 40 C.F.R. 122.42(e)(1) and maintain the plan on-site. There are two parts to the NMP burden estimate—one for the engineering design of storage structures for manure, litter, and process wastewater, which is discussed in Section 6(ii), and a second for all other measures for the production area and land application area, which is discussed here, which is discussed in Section 6b(ii). For the nonengineering portion of the NMP, EPA based its burden estimate on typical cost per acre estimates for plan development by certified planners. Based on the \$5/acre estimate in U.S. EPA (2002a,b; in 1997 dollars, but escalated to 2001 dollars for the ICR analysis), EPA calculated average plan development costs for average CAFO acres by animal type. Then EPA calculated a weighted average plan cost of approximately \$1,900 based on the number of CAFOs of each type (See Appendix 3). Finally, EPA divided this average plan cost by an agronomist wage rate (\$36.23) to obtain an average burden of 52 hours to develop a plan. Although some owners or operators will be able to develop their own NMPs, EPA has assumed that this burden mainly accrues to third parties who have been certified to prepare such plans. This burden, which does not apply to CAFOs that do not land apply manure generated on-site, will be incurred in the first year an operation requests coverage under the revised regulations and must be updated at least once every five years.

Large CAFOs that transfer manure, litter, and process wastewater to another person will also need to collect the following information for each transfer: the date of transfer, the recipient's name and address, and the quantity transferred. They will also need to provide the recipient with nutrient content information. Based on a national estimate of excess manure at Large CAFOs of 181 million tons and an average transfer amount of 100 tons, EPA estimated an average of 169 transfers per year per Large CAFO ($181 \text{ million} \div 100 \div 10,700 \text{ CAFOs}$). Using best professional judgement, EPA estimated that recording the information required for each transfer would require only 5 minutes. The resulting average burden per CAFO is 14 hours.

All CAFOs prepare and submit an annual report to the permitting authority. The report provides an annual update to several data items contained in the permit application forms as well as a summary of production area discharges, if any. Many CAFO operators or owners will be able to copy information directly from the application form or their records to their report. Based on best professional judgement, EPA assumes that the annual report will require only one hour to complete and submit, on average. This is comparable to the burden to reapply for general permit coverage in the "Applications for NPDES Discharge Permits and the Sewage Management Permits" ICR (No. 0226.15), which is a comparable reporting activity.

This ICR also incorporates the potential burden to CAFO owners or operators of participating in on-site inspections conducted by the permit authority. As noted in the State burden section below, EPA assumed that inspectors spend an average of four hours in on-site inspection activities. During this time, the inspector may want to review records and inspect waste management and land application equipment. It is likely that the CAFO operator or owner will incur some burden during the inspection to make records available and show the facility to the inspector. Therefore, EPA assumed an average burden to CAFOs of four hours per inspection.

Table 6–2 summarizes the estimated burden per respondent per activity for completing activities associated with each information collection item. It also identifies the frequency of the activity.

State Burden

The 43 approved States will incur burden to develop their program modification request, issue permits, and track and report permit compliance. Table 6-3 provides a summary of the burden estimates described below. For its analysis, EPA obtained labor burden estimates that it has used in previous NPDES-related cost and burden analyses, and asked State agency and EPA Regional staff to evaluate whether those estimates were adequate for the CAFO rule. EPA also considered comments provided on the proposed rule and NODA that addressed the issue of State burdens.

States will incur burden for three categories of activities:

- State NPDES program modification request
- implementation for general permits
- implementation for individual permits.

Rule modification is a one-time activity in which approved States modify their NPDES programs to incorporate the new requirements contained in the final rule. Following rule modification, the approved States will need to request EPA approval for the modifications made to their NPDES programs in response to the final rule. These applications consist of a narrative program description including enforcement and compliance plans, a legal certification that the State has authority to implement the program (Attorney General’s statement), a compilation of relevant statutes, regulations, guidance, and tribal agreements, and copies of permit application forms, permit forms and reporting forms. In general, the amount of labor time required to prepare the application will vary. EPA’s labor hour estimate is based on program modification and approval burdens in an active NPDES ICR (“NPDES and Sewage Sludge Management State Program Requirements,” OMB NO. 2040-0057, EPA ICR 0168.07), which estimates 250 hours per State to prepare and submit a request for NPDES Program Modification under 40 C.F.R. 123.62. Allen (2002) and Sylvester (2002) concurred with this estimate, but Coats (2002) noted that 80 hours might be sufficient.

Approved States will incur annual costs to administer their permit programs. To administer State general permits, permitting authorities will need to:

- update their general permits to incorporate final rule requirements
- review NOI forms submitted by CAFO operators seeking coverage under a general permit.

To administer individual permits, State agencies will need to:

- review application forms (i.e., Forms 1 and 2B)
- request public comment prior to issuing a permit
- conduct public hearings, as needed.

To assure compliance with State NPDES permit programs, State agencies will need to:

- inspect permitted CAFOs
- review annual reports submitted by permitted CAFOs.

To update their general permits, the 43 approved States will need to revise the general permit conditions affected by the final rule. For example, general permits will need to specify the method(s) that the permit authority is requiring the CAFO owner or operator to use to calculate the rate of appropriate manure application as a special condition.

EPA estimated that States may need 300 hours to revise their general permits to reflect new provisions of the final rule. Information provided by State contacts indicated that initial general permit development was a contentious process that took two (in Maryland; Allen, 1999) to four years (in Washington; KauzLoric, 1999) to complete. EPA does not believe that the changes necessitated by the final rule (e.g., adding the NMP requirements, adding new record keeping or reporting requirements, switching from size thresholds based on animal units to animal counts, and altering the ELG, BPJ, or special conditions where necessary) will require the same magnitude of effort as initial permit development. Furthermore, EPA will develop a model permit that States can adopt in whole or part to minimize the costs of permit revisions. Sylvester (2002) estimated that revising Wisconsin's general permit may take 456 hours and Coats (2002) estimated that States in Region 2 would need 160 hours to revise their general permits. EPA's estimate of 300 hours is the midpoint between these estimates. Allen (2002) considered EPA's 300-hour estimate to be acceptable.

Revised general permits will be subject to public comment. EPA estimated costs for the proposed rule based on public notice, comment review, and response requiring 160 hours. Comments from State employees in South Dakota (Pirner, 2001) and Illinois (Willhite, 2001) indicated that costs would be higher because the process for selecting the type of facilities that may be eligible under a general permit will be contentious. Subsequent information obtained by EPA indicates a wide range of time from as little as 100 hours (Coats, 2002) to as much as 968 hours (Sylvester, 2002); Allen (2002) considered EPA's revised estimate of 180 hours to be acceptable. EPA assumed that the 180-hour estimate reflects labor requirements for the 22 States that already provide general NPDES permit coverage for CAFOs (U.S. EPA, 2001) because these States have already resolved the applicability issue, which should not be substantially affected by the final rule. For the 21 States with approved programs that do not currently provide coverage under a general permit, EPA used the high estimate of 968 hours provided by Sylvester (2002) to incorporate additional time for the decision making process regarding which CAFOs would qualify for general permit coverage. The weighted average across all 43 States is approximately 570 hours ($0.51 \times 180 + 0.49 \times 968$).

Finally, States may conduct hearings regarding general permit revisions (or development for the States that do not currently provide general permit coverage for CAFOs). For the proposed rule, EPA derived costs for 240 hours based on the assumption that a State holds four hearings, each requiring 60 hours of labor time. Allen (2002) and Coats (2002) considered that assumption acceptable. Sylvester (2002) recommended an alternative estimate of 616 hours based on 12 hearings requiring 48 staff hours each plus an additional 40 hours for material preparation. For the final rule, EPA assumed that its original 240-hour estimate is sufficient for the 22 States that only need to revise existing general permits, and that the 21 States that do not currently provide general permit coverage for CAFOs will conduct additional hearings. For those States, EPA used the 616-hour estimate. The weighted average across all States is approximately 420 hours ($0.51 \times 240 + 0.49 \times 616$).

Adding together the three labor estimates for general permit development, EPA obtained a total estimate of 1,290 hours. For the 22 States that already provide general permit coverage, aggregate hours would be 720 hours. For the 21 States that would need to provide general permit coverage and determine which CAFOs are eligible, aggregate hours would be approximately 1,880 hours. It is possible that some of the States not currently providing general permit coverage will continue to rely solely on individual permits for CAFOs. Thus, EPA's cost analysis assumption that all 43 States will incur general permit revision costs provides an upper bound cost estimate.

CAFOs seeking coverage under a State's (or EPA's) general permit will submit completed NOI forms that the permitting authority will need to review and make a determination of coverage. For the proposed rule, EPA estimated that NOI review would require one hour. Comments indicated that the labor requirement would be substantially higher. For example, a Wisconsin State employee (Bazzell, 2001) indicated an expected expenditure of approximately 100 hours to review the NOI and accompanying documents. Ohio employees (Jones, Speck and Daily, 2001) indicated that the estimates provided in the proposed rule did not allow time to ensure that the facilities were meeting all permit conditions. Willhite (2001) also indicated that costs for review of the NOI would be substantially higher. EPA believes that much of the concern regarding its proposed rule estimate centered on review of the proposed permit nutrient plan. For example, 60 hours of the 96-hour Wisconsin estimate pertained to reviewing the content of the nutrient management plan (Sylvester, 2002); 32 hours were allocated for review and approval of manure storage and runoff management systems, and 4 hours for general review for completeness of information. The final rule does not require a CAFO to submit this plan with the permit application, so this concern does not pertain to the final rule. Nevertheless, EPA has revised the information requirements for the NOI and subsequently increased its estimate of the amount of time required for review. Reviews of NOI forms to ensure completeness of federally required information should not take longer than four hours. This is consistent with the estimate provided by Sylvester (2002), and Allen (2002), Coats (2002), and Domingo (2002) indicated this estimate would be adequate for NOI review. The annual reports that CAFOs are now required to submit (regardless of permit type) will contain the much of the same information as the NOI form. Consequently, EPA assumed that the State burden to review an annual report, update PCS as needed, and maintain CAFO records is the same as the NOI review estimate--four hours.

State administration costs for individual permits include 100 hours per permit to review Forms 1 and 2B, issue public notices, and respond to comments. EPA increased this estimate from the 70

hours used in its analysis of the proposed rule in response to comments (e.g., Muldener, 2001). Sylvester (2002) and Allen (2002) concurred with this estimate; Harsch (2002) thought it might be low, but Coats (2002) considered it to be twice the time needed.

EPA estimated that the hearing time for an individual permit would require 200 hours based on estimates from Washington State (KauzLoric, 1999), which indicated that a hearing required approximately 100-150 hours of State employee time. Using best professional judgement, EPA assumed an average of 2 hearings per permit and an average requirement of 100 hours per hearing. This is higher than the estimate per hearing provided by Sylvester (2002). Nevertheless, Sylvester agreed with the estimate, as did Coats (2002) and Allen (2002). Harsch (2002) provided an alternative estimate of 22 to 33 hours. EPA decided to retain the 200-hour estimate to reflect the possibility that some individual permits attract numerous hearing participants.

EPA assumed that the inspections for CAFOs covered by either a general or an individual permit would be similar to the Reconnaissance Inspections and the Compliance Evaluation Inspections described in the active NPDES ICR (“Pollutant Discharge Elimination System and Sewage Sludge Management State Programs,” OMB NO. 2040-0057, EPA ICR 0168.07), which have burden estimates of 8 hours and 24 hours, respectively. Coats (2002), Allen (2002), Harsch (2002), and Sylvester (2002) agreed with this range of estimates. Based on best professional judgement, EPA assumes that the average inspection time will be closer to 16 hours, which includes 6 hours for round-trip travel time, 2 hours to review State records and prepare for the inspection, 4 hours to conduct the on-site inspection of records and operation, and 4 hours to report on the inspection and maintain records (U.S. EPA, 2002c).

Table 6–3. Burden Estimates for an Approved State by Activity
(first two activities may not belong in ICR)

Activities	Frequency per State	Burden Hours per Response ¹
NPDES Program Modification Request	one time	250
Implementation: General Permits General permit development Review and approval of NOIs	one time per CAFO	1,290 4
Implementation: Individual Permits Review Forms 1 and 2B, issue public notification, respond to comments Public hearing	per CAFO per CAFO	100 200
Compliance Evaluation Activities Review CAFO annual reports Facility inspections	per CAFO per CAFO	4 16

1. A response is the completion of an activity and the duration and frequency of responses can vary. For example, each of the following is considered a response: the one-time effort to request NPDES program modification, reviewing permit applications, and annual NOI publications.

6b Estimating Respondent Costs

This section describes how EPA derived the cost per respondent for each of the activities described above. Additional detail is provided in Exhibits A.1 and A.2 in Appendix 3.

6b(i) Estimating Labor Costs

CAFO Labor Costs

EPA multiplied the burdens reported above by the wage rates in Table 6–4 to obtain cost estimates at the CAFO-level. Table 6–5 identifies which wage rate was used for each activity and reports the annual cost per CAFO by activity.

Table 6–4. Wage Rates Used to Value CAFO-Related Burdens

Labor Category	Original Rate	Source	Conversion	Hourly Rate (\$1999)
Farm Operator/Owner	\$20/hr	U.S. EPA (2000a)	(1997 to 2001) ¹	\$21.83
Farm Laborer	\$10/hr	U.S. EPA (2000a)	(1997 to 2001) ¹	\$11.00
Agronomist ²	\$52,160/yr	U.S. EPA (2000c)	2080 hrs/yr 1.33 benefits multiplier	\$36.23

1. The index of average prices paid by farmers increased from 361 in 1997 to 394 in 2001 (USDA, 2001).

2. BLS (2001) reported a median annual salary of \$52,160 in 2000 dollars for agricultural scientists. EPA divided this by 2,080 hours to obtain an hourly rate of \$25.08. EPA escalated the wage to 2001 dollars using an inflation factor of 1.085 based on BLS reported average earnings for professional specialty occupations within private service-producing industries (BLS, 2002). Employee benefits from this same occupational category were used to derive a 1.33 loading factor to account for employee benefits. The resulting hourly labor rate for an agronomist is \$36.23.

State Labor Costs

EPA used a wage rate of \$29.78 to value State labor burden, which was based on the mean hourly wage rate of \$20.53 for Conservation Scientists (SOC 19-1031) employed in the public sector (BLS, 2001). That rate was escalated from 2000 dollars to 2001 dollars using the Employment Cost Index, which indicates a 3.6% increase in wages and salaries for state and local government workers from December 2000 to December 2001 (BLS, 2002c). Then, the escalated wage rate of \$21.27 ($\20.53×1.036) was converted to a loaded wage rate using a total compensation-to-wage ratio of 1.4, which was the ratio in 2001 for all state and local workers (BLS, 2002b).

Table 6–5. Annual Cost per CAFO by Activity

Activities	Annual Burden (labor category)	Labor Cost¹ (\$)
Read/Understand the Rule	3 (operator/owner)	\$66
Permit Application Activities		
Complete/submit Notice of Intent for general permit	9 (operator/owner)	\$196
Complete/submit individual permit application	9 (operator/owner)	\$196
ELG Data Collection and Record Keeping Activities²		
Conduct visual inspections and maintain ELG and NPDES records	93 (laborer)	\$1,023
Manure application equipment inspection	4 (laborer)	\$44
Manure sampling	2 (laborer)	\$25
Soil sampling	9 (laborer)	\$95
NPDES Record Keeping and Reporting Activities		
Develop/revise nutrient management plan	52 (agronomist)	\$1,876
Off-site transfer record keeping	14 (laborer)	\$154
Submit annual report to permitting authority	1 (operator/owner)	\$22
Attend on-site Compliance Evaluation Inspection	4 (operator/owner)	\$87

1. All annual labor costs are rounded to the nearest dollar. Unit costs may not match hour and wage rate detail due to independent rounding for presentation. Unit costs depend on which wage rate is used to value the labor burden.

2. Although Small and Medium CAFOs are not subject to the ELG requirements in 40 C.F.R. 412, EPA assumes that the ELG burdens provide upper bound estimates for the burdens to document NMP implementation for Small and Medium CAFOs because many of the ELG information elements also provide documentation for the NMP and information for the annual report.

Table 6–6. Annual Cost per State Agency by Activity

Activities	Burden (hours)	Annual Labor Cost¹ (\$29.78/hour)
NPDES Program Modification Request	250	\$7,445
Implementation: General Permits		
General permit development	1,290	\$38,417
Review and approval of NOIs	4	\$119
Implementation: Individual Permits		
Review Forms 1 and 2B, issue public notification, respond to comments	100	\$2,978
Public hearing	200	\$5,956
Compliance Evaluation Activities		
Review CAFO annual reports	4	\$119
Facility inspections	16	\$476

1. All annual labor costs are rounded to the nearest dollar.

6b(ii) Estimating Capital and Operation and Maintenance Costs

CAFO Capital and O&M Costs

A CAFO facility incurs capital costs when it purchases equipment or builds structures that are needed for compliance with the rule's reporting and record keeping requirements that the facility would not use otherwise. The capital costs included in this ICR are based on those used in the social cost analysis for the final rule, which are documented in U.S. EPA (2002a,b).

Capital costs relevant to this ICR include purchasing a soil auger to collect soil samples and a manure sampler. CAFOs will also need to install depth markers in their lagoons. All operations will need to develop the NMP elements that pertain to the production area. The cost of \$1,050 represents an out-of-pocket expenditure to obtain an engineering analysis of the waste storage volume requirements needed to comply with the final rule. This burden will occur the first time a facility requests coverage under the revised regulations and should not need to be updated unless the operation undergoes a significant change in operation.

To incorporate capital expenditures in EPA's estimate of annual burden, all capital costs have been amortized over a 10-year period assuming a 7 percent interest rate. This is the amortization method used to estimate annualized costs for the economic analysis of the proposed rule (U.S. EPA, 2002c).

A facility incurs O&M costs when it regularly uses services, materials, or supplies needed to comply with the rule's reporting and record keeping requirements that the facility will not use otherwise. Any cost for the operation and upkeep of capital equipment is considered O&M costs. For the final rule, O&M costs include laboratory analysis of soil and manure and a general record keeping cost. All costs were based on the cost analysis for the final rule and are documented in U.S. EPA (2002a and 2002b).

Table 6–7 summarizes the capital and O&M costs associated with the record keeping and reporting activities.

State O&M Costs

States will incur publication costs to issue public notices during general permit development and for each individual permit. EPA assumed that States would publish one notice to request comments on the draft general permit and one notice per individual permit. In the event an individual permit require a public hearing, a public notice is required. The publication cost per public notice is \$1,060, which is based on the assumption that notices will be placed in four publications at an average cost of \$265 (U.S. EPA, 2002c).

**Table 6–7. Annual Capital and O&M Cost per CAFO
(2001 dollars)**

Activities	Frequency per CAFO	Annual Cost (\$)¹
Capital Costs²		
Soil auger for sampling	one time	\$27
Manure sampler	one time	\$33
Lagoon depth marker installation	one time	\$33
Engineering analysis for production area NMP elements	one time	\$1,050
O&M Costs³		
Lab analysis of soil sample	every 5 years	\$94
Lab analysis of manure sample	annual	\$127
Other direct costs for record keeping	annual	\$88

1. Costs are taken from rule support documents (U.S. EPA, 2002a,b). These estimates have been escalated from 1997 dollars to 2001 dollars using a Farm Production Cost Index (USDA, 2001).

2. All capital costs are reported as total costs. They are amortized over 10 years at a 7% discount rate for use in the analysis.

3. All O&M costs are from rule support documents (U.S. EPA, 2002a,b). The soil lab analysis cost, which accrues every five years, is included in the ICR burden estimate in the year it accrues.

6c Estimating Agency Burden and Cost

EPA will incur burden to review modification requests for State NPDES programs. The burden estimate for reviewing and approving a program modification request in an active NPDES ICR (“NPDES and Sewage Sludge Management State Program Requirements,” OMB NO. 2040-0057, EPA ICR 0168.07) 50 hours.

EPA is also responsible for writing NPDES permits for CAFOs in the seven States (Alaska, Arizona, Idaho, Massachusetts, New Hampshire, New Mexico, and Oklahoma) that either do not have an approved program or do not issue CAFO permits. Based on CAFO data, EPA estimated that CAFOs in these states represent 3 percent of the total number of CAFOs (U.S. EPA, 2002c). In these instances, EPA is responsible for the activities and associated burdens and costs that would otherwise be incurred by a State, excluding the general permit development, rule adoption, and application burden. The permitting burden estimates for EPA, shown in Table 6-8, are the same as State burdens.

EPA used an hourly wage rate for a GS12, Step One Federal employee to estimate the cost of the Agency staff. The U.S. Office of Personnel Management 2001 General Schedule reported a base annual salary of \$51,927. EPA divided this by 2,080 hours to obtain an hourly rate of \$24.96. Multiplying this rate by 1.6 to incorporate typical Federal benefits (OPM, 1999), EPA obtained a final hourly rate of \$39.94. Table 6–8 includes EPA’s cost per response.

Table 6–8. EPA Burden and Cost Estimates

Activities	Frequency	Burden Hours per Response¹	Labor Cost (\$39.94/hr)
Review State Modification Requests	per State	50	\$1,997
General Permit Activities³ Review and approval of NOIs	per CAFO	4	\$160
Individual Permit Activities⁴ Review Forms 1 and 2B, issue public notification, respond to comments	per CAFO	100	\$3,994
Public hearing	per CAFO	200	\$7,988
Compliance Evaluation Activities Review CAFO annual reports	per CAFO	4	\$160
Facility inspections	per CAFO	16	\$639
1. A response is the completion of an activity and the duration and frequency of responses can vary. For example, each of the following is considered a response: one-time reviews of a State program request or reviewing a CAFOs permit application.			

6d Estimating the Respondent Universe and Total Burden and Costs

EPA's estimate of total burden and costs is the product of the burden and cost estimates per activity or response, provided above, and the number of CAFOs or States expected to perform specific activities each year. As noted in Section 5d, the compliance schedule for the first three years after promulgation of the final rule is complex because EPA expects different CAFO groups to have different compliance schedules and somewhat different compliance needs (e.g., not all CAFOs incur the off-site transfer burden and land application-related burdens). Exhibit B in Appendix 3 summarizes the compliance schedule and Exhibits A.4 and A.5 show the number of CAFO and State respondents and responses, respectively, on an annual basis for the first three years. Exhibits A.6 and A.7 in Appendix 3 report the associated annual burden estimates and annual costs, respectively.

In addition to estimating the fraction of CAFOs in approved States, EPA derived assumptions to distribute the permits among general and individual permits as well as the number of individual permits requiring hearings. Although the active EPA ICR 0226.15 assumed that only 5 percent of all CAFO permits obtained individual permits, in this ICR, EPA has assumed that—subsequent to the final rule—30 percent of CAFOs will apply for an individual NPDES permit and 70 percent will submit an NOI for coverage under a general permit. EPA chose this more conservative estimate because only 22 of the 43 approved States have general permits for CAFOs. Although EPA predominantly uses general permits in the States where it is responsible for CAFO permits and believes that many of the newly permitted CAFOs can be covered by a general permit, it is

possible that some States will continue to rely on individual permits. There is no readily available information to derive an estimate of the distribution.⁴

6e Bottom Line Burden Hours and Costs Tables

This section provides a description of bottom line burden and cost estimates for the final rule. Table 6–9 provides a summary of the average annual number of respondents, burden hours, and costs for CAFO and State respondents. Detailed information can be found in Appendix 3.

6e(i) CAFO Respondents and State Respondents

The bottom line burden hours and costs shown in Table 6–9 reflect the average annual burden hours and costs for all ICR-related activities performed by respondents during the ICR approval period. These estimates are net of burden for 45 individual permit applications that represent the overlap between this ICR and the Applications ICR. The Applications ICR contains 135 individual permit applications for CAFOs per year. EPA assumed the 4-month overlap (from January 1, 2003 to April 30, 2003) contained one-third or 45 of those applications. In the active ICR, the CAFO burden per application was 9 hours and the State burden for review was 1 hour per application. Thus, EPA netted out 405 hours of CAFO burden and 45 hours of State burden from the 2003 burden estimates reported for this ICR.

The final burden and cost estimates can be used to calculate mean burden and cost per respondent. As reported in Exhibit A.8 in Appendix 3, the total number of CAFO respondents in the first three years is 35,137, which double counts any CAFOs that perform annual activities more than once during the three-year ICR approval period. The annual average number of respondents is 11,712 ($35,137 \div 3$). The total burden over three years is 4.8 million hours, which results in the annual average burden of 1.6 million hours reported in Table 6–8 ($4.8 \div 3$). Dividing the annual average burden of 1.6 million hours by 11,712 respondents, EPA estimated that the annual average burden per CAFO respondent is approximately 138 hours. The annual average labor cost per respondent is \$2,124 ($\$24.9 \text{ million} \div 11,712$). These estimates include burden to prepare the land application portion of the NMP, which may be a third-party burden. Annual average total cost including capital and O&M expenses is \$2,482 ($\$29.1 \text{ million} \div 11,712$).

The State burden and cost estimates in Table 6–9 can be used to calculate mean burden and cost per State; actual burdens and costs will vary with the number of CAFOs in each State. There are 43 States that will incur the burden and costs described above. On average, 29 States will incur burden each year, which assumes a gradual phase-in across States of program changes over a two-year period. Dividing the annual average burden of 0.29 million hours for all States by 29 gives an average per State burden of approximately 10,000 hours. This includes the total burden for one-time activities to update State programs and general permits. The average annual cost per State is \$0.30 million for labor, and \$0.36 million when O&M costs are included.

⁴Because CAFO permit information is not consistently available through PCS and because States use a variety of NPDES and non-NPDES permits to regulate CAFO activities, EPA has not been able to determine what proportion of the existing permits are general permits.

**Table 6–9. Summary of Average Annual CAFO and State Respondents, Burden Hours, and Costs for the ICR Approval Period
(Costs in millions \$1999)**

Respondent	Respondents	Responses	Burden (million hours)	Labor Costs	Capital Costs	O & M Costs	Total Costs
CAFOs	11,712	82,705	1.61	\$24.9	\$1.3	\$2.9	\$29.1
States	29	18,497	0.29	\$8.7	\$0	\$1.7	\$10.3
Total	11,741	101,202	1.90	\$33.5	\$1.3	\$4.6	\$39.4
Detail may not add to totals because of independent rounding.							

6e(ii) Bottom Line Agency Burden and Cost

EPA estimated the Agency burden and cost using the compliance schedule described in Section 5d. In Appendix 3, Exhibit A.5 shows how many CAFO permits will be processed per year during the three-year ICR approval period and Exhibits A.6 and A.7 in Appendix 3 show the corresponding burden and cost estimates. Under the final rule, the average annual burden for EPA is estimated to be approximately 9,000 hours and the average annual cost will be \$0.37 million.

6f Burden Statement

EPA estimates that the total average annual public burden for this information collection request would be 1.89 million hours, including 0.25 million hours for State respondents and 1.64 million hours for all CAFO respondents covered by this ICR. This estimate includes the time required to review instructions, search existing data sources, gather and maintain all necessary data, and complete and review the information collection. The annual average estimate of 11,741 respondents includes 29 States and 11,712 CAFO respondents. The annual average number of responses is 101,202, which includes 18,497 State responses and 82,705 CAFO responses. Average annual capital costs are \$1.3 million and O&M costs are \$4.6 million.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations are listed in 40 C.F.R. Part 9 and 48 C.F.R. Chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention: Desk Officer for EPA. Include the EPA ICR number (1989.02) and OMB control number in any correspondence.

References

Allen, P. 1999 (May 19). Personal Communication. Environmental Program Manager, Maryland Department of Environment, Water Management Administration. (310) 631-3323.

Bazzell, D. 2001. Public Comment Submitted in Response to EPA's CAFO Rule. Wisconsin Department of Natural Resources. Doc# CAFO201450.

Bureau of Labor. 2002a. Consumer Price Index-All Urban Consumers. www.bls.gov.

-----, 2002b. Employer Cost for Employee Compensation. www.bls.gov. (Series Id. CCU310000290000D, Total compensation, Public Administration, State and local government)

-----, 2002c. Employment Cost Index. www.bls.gov. (Series Id: ECU20003A, Wages and salaries, State and local government)

-----, 2001. 2000 National Industry-Specific Occupational Employment and Wage Estimates. www.bls.gov. (SIC 902 - State Government)

Coats, A. 2002. EPA Region 2. Personal communication. July 24, 2002.

Domingo, D. 2002. EPA Region 10. Personal communication. July 24, 2002.

Government Pay Tables, 2001. <http://www.seemyad.com/gov/USAPAY.htm>

Hammerberg, E. 2002. Maryland Department of the Environment. Personal Communication. March 8, 2002. (410) 631-3345.

Harsch, J. 2002. Kansas Department of Health and Environment. Personal communication. July 31, 2002.

Jones, C.; Speck, S.; Daily, F. 2001. Public Comment Submitted in Response to EPA's CAFO Rule. Ohio Department of Agriculture; Ohio Department of Natural Resources; Ohio EPA. Doc# CAFO201851.

KauzLoric, P. 1999. Personal Communication. Dairy Program Coordinator, Washington Department of Ecology, Water Quality Program, Olympia, WA. May 11, 1999. (360) 407-6413.

Kirkpatrick, B. 2002. Personal Communication. Arkansas Dept of Environmental Quality. April 2, 2002. (501) 682-0655.

Muldener, K. 2001. Public Comment Submitted in Response to EPA's CAFO Rule. Kansas Department of Health and Environment. Doc# CAFO202366.

Pirner, S. 2001. Public Comment Submitted in Response to EPA's CAFO Rule. South Dakota Departments of Environment and Natural Resources and Department of Agriculture. Doc# CAFO201739.

Sylvester, S. 2002. Wisconsin Department of Natural Resources. Personal communication. August 1, 2002.

Tilley, M., and Kirkpatrick B. 2002 (March 12). Personal Communication. Arkansas Department of Environmental Quality. (501) 682-0655.

U.S. Department of Agriculture (USDA). 2001. Normalized Market-Clearing Price Estimates, National-Level Indices (Table 2).

U.S. Environmental Protection Agency (U.S. EPA). 2000/2a. Cost Model Development Document for Beef and Dairy CAFOs.

———. 2000/2b. Cost Model Development Document for Swine and Poultry CAFOs.

———. 2000/2c. Development Document for the Proposed Regulatory Revisions to the National Pollutant Discharge Elimination System Regulations for Concentrated Animal Feeding Operations and Feedlot Effluent Limitations Guidelines.

———. 2001 (March). State Compendium: Programs and Regulatory Activities Related to Animal Feeding Operations.

Office of Personnel Management (OPM). 1999. *Work Years and Personnel Costs: Fiscal Year 1998*. OMSOE-OWI-98-12 Washington, D.C.: U.S. Office of Personnel Management.

Van Soestbergen, J. 2002 (March 11). Personal Communication. Virginia Department of Environmental Quality.

Willhite, M. 2001 (July 30). Public Comment Submitted in Response to EPA's CAFO Rule. Illinois EPA. Doc# CAFO202080.

Appendix 1. Legal Authority

United States Code, Title 33 (Navigation and Navigable Waters), Chapter 26 (Water Pollution Prevention and Control), Subchapter III (Standards and Enforcement)

Sec. 1311. Effluent limitations

Sec. 1318. Records and reports; inspections

United States Code, Title 33 (Navigation and Navigable Waters), Chapter 26 (Water Pollution Prevention and Control), Subchapter IV (Permits and Licences)

Sec. 1341. Certification

Sec. 1342. National pollutant discharge elimination system

United States Code, Title 33 (Navigation and Navigable Waters), Chapter 26 (Water Pollution Prevention and Control), Subchapter V (General Provisions)

Sec. 1362. Definitions

Clean Water Act

Section 308. Inspections, monitoring, and entry

United States Code
Title 33 (Navigation and Navigable Waters)
Chapter 26 (Water Pollution Prevention and Control)
Subchapter III (Standards and Enforcement)

Sec. 1311. Effluent limitations

(5) (a) Illegality of pollutant discharges except in compliance with law

Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

(b) Timetable for achievement of objectives

In order to carry out the objective of this chapter there shall be achieved -

(1)

(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 1314(b) of this title, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 1317 of this title; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 1283 of this title prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 1314(d)(1) of this title; or,

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

(2)

(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 1325 of this title), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall

require compliance with any applicable pretreatment requirements and any other requirement under section 1317 of this title;

(B) Repealed. Pub. L. 97-117, Sec. 21(b), Dec. 29, 1981, 95 Stat. 1632.

(C) with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 1317 of this title which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989;

(E) as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989, compliance with effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 1314(a)(4) of this title shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(4) of this title; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than 3 years after the date such limitations are established, and in no case later than March 31, 1989.

(3)

(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989; and

(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 1342(a)(1) of this title in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than March 31, 1989.

(c) Modification of timetable

The Administrator may modify the requirements of subsection (b)(2)(A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants.

(d) Review and revision of effluent limitations

Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

(e) All point discharge source application of effluent limitations

Effluent limitations established pursuant to this section or section 1312 of this title shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this chapter.

(f) Illegality of discharge of radiological, chemical, or biological warfare agents, high-level radioactive waste, or medical waste

Notwithstanding any other provisions of this chapter it shall be unlawful to discharge any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste, into the navigable waters.

(g) Modifications for certain nonconventional pollutants

(1) General authority

The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, and total phenols (4AAP) (when determined by the Administrator to be a pollutant covered by subsection (b)(2)(F) of this section) and any other pollutant which the Administrator lists under paragraph (4) of this subsection.

(2) Requirements for granting modifications

A modification under this subsection shall be granted only upon a showing by the owner or operator of a point source satisfactory to the Administrator that -

- (A) such modified requirements will result at a minimum in compliance with the requirements of subsection (b)(1)(A) or (C) of this section, whichever is applicable;
- (B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and
- (C) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

(3) Limitation on authority to apply for subsection (c) modification

If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time period as he is eligible to apply for a modification under this subsection.

(4) Procedures for listing additional pollutants

(A) General authority

Upon petition of any person, the Administrator may add any pollutant to the list of pollutants for which modification under this section is authorized (except for pollutants identified pursuant to section 1314(a)(4) of this title, toxic pollutants subject to section 1317(a) of this title, and the thermal component of discharges) in accordance with the provisions of this paragraph.

(B) Requirements for listing

- (i) Sufficient information

The person petitioning for listing of an additional pollutant under this subsection shall submit to the Administrator sufficient information to make the determinations required by this subparagraph.

- (ii) Toxic criteria determination

The Administrator shall determine whether or not the pollutant meets the criteria for listing as a toxic pollutant under section 1317(a) of this title.

- (iii) Listing as toxic pollutant

If the Administrator determines that the pollutant meets the criteria for listing as a toxic pollutant under section 1317(a) of this title, the Administrator shall list the pollutant as a toxic pollutant under section 1317(a) of this title.

- (iv) Nonconventional criteria determination

If the Administrator determines that the pollutant does not meet the criteria for listing as a toxic pollutant under such section and determines that adequate test methods and sufficient data are available to make the determinations required by paragraph (2) of this subsection with respect to the pollutant, the Administrator shall add the pollutant to the list of pollutants specified in paragraph (1) of this subsection for which modifications are authorized under this subsection.

(C) Requirements for filing of petitions

A petition for listing of a pollutant under this paragraph -

- (i) must be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title;

- (ii) may be filed before promulgation of such guideline; and

- (iii) may be filed with an application for a modification under paragraph (1) with respect to the discharge of such pollutant.

(D) Deadline for approval of petition

A decision to add a pollutant to the list of pollutants for which modifications under this subsection are authorized must be made within 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title.

(E) Burden of proof

The burden of proof for making the determinations under subparagraph (B) shall be on the petitioner.

(5) Removal of pollutants

The Administrator may remove any pollutant from the list of pollutants for which modifications are authorized under this subsection if the Administrator determines that adequate test methods and sufficient data are no longer available for determining whether or not modifications may be granted with respect to such pollutant under paragraph (2) of this subsection.

(h) Modification of secondary treatment requirements

The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that -

- (1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 1314(a)(6) of this title;
- (2) the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water;
- (3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable, and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge;
- (4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;
- (5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;
- (6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;
- (7) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;
- (8) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;
- (9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 1314(a)(1) of this title after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged. For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 1251(a)(2) of this title. For the purposes of paragraph (9), "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate. A municipality which applies secondary

treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. Notwithstanding any other provisions of this subsection, no permit may be issued under this subsection for discharge of a pollutant into the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

(i) Municipal time extensions

(1) Where construction is required in order for a planned or existing publicly owned treatment works to achieve limitations under subsection (b)(1)(B) or (b)(1)(C) of this section, but (A) construction cannot be completed within the time required in such subsection, or (B) the United States has failed to make financial assistance under this chapter available in time to achieve such limitations by the time specified in such subsection, the owner or operator of such treatment works may request the Administrator (or if appropriate the State) to issue a permit pursuant to section 1342 of this title or to modify a permit issued pursuant to that section to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after February 4, 1987. The Administrator (or if appropriate the State) may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the publicly owned treatment works based on the earliest date by which such financial assistance will be available from the United States and construction can be completed, but in no event later than July 1, 1988, and shall contain such other terms and conditions, including those necessary to carry out subsections (b) through (g) of section 1281 of this title, section 1317 of this title, and such interim effluent limitations applicable to that treatment works as the Administrator determines are necessary to carry out the provisions of this chapter.

(2)

(A) Where a point source (other than a publicly owned treatment works) will not achieve the requirements of subsections (b)(1)(A) and (b)(1)(C) of this section and -
- (i) if a permit issued prior to July 1, 1977, to such point source is based upon a discharge into a publicly owned treatment works; or

- (ii) if such point source (other than a publicly owned treatment works) had before July 1, 1977, a contract (enforceable against such point source) to discharge into a publicly owned treatment works; or
- (iii) if either an application made before July 1, 1977, for a construction grant under this chapter for a publicly owned treatment works, or engineering or architectural plans or working drawings made before July 1, 1977, for a publicly owned treatment works, show that such point source was to discharge into such publicly owned treatment works, and such publicly owned treatment works is presently unable to accept such discharge without construction, and in the case of a discharge to an existing publicly owned treatment works, such treatment works has an extension pursuant to paragraph (1) of this subsection, the owner or operator of such point source may request the Administrator (or if appropriate the State) to issue or modify such a permit pursuant to such section 1342 of this title to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after December 27, 1977, or the filing of a request by the appropriate publicly owned treatment works under paragraph (1) of this subsection, whichever is later. If the Administrator (or if appropriate the State) finds that the owner or operator of such point source has acted in good faith, he may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the point source to achieve the requirements of subsections (b)(1)(A) and (C) of this section and shall contain such other terms and conditions, including pretreatment and interim effluent limitations and water conservation requirements applicable to that point source, as the Administrator determines are necessary to carry out the provisions of this chapter.

(B) No time modification granted by the Administrator (or if appropriate the State) pursuant to paragraph (2)(A) of this subsection shall extend beyond the earliest date practicable for compliance or beyond the date of any extension granted to the appropriate publicly owned treatment works pursuant to paragraph (1) of this subsection, but in no event shall it extend beyond July 1, 1988; and no such time modification shall be granted unless (i) the publicly owned treatment works will be in operation and available to the point source before July 1, 1988, and will meet the requirements of subsections (b)(1)(B) and (C) of this section after receiving the discharge from that point source; and (ii) the point source and the publicly owned treatment works have entered into an enforceable contract requiring the point source to discharge into the publicly owned treatment works, the owner or operator of such point source to pay the costs required under section 1284 of this title, and the publicly owned treatment works to accept the discharge from the point source; and (iii) the permit for such point source requires that point source to meet all requirements under section 1317(a) and (b) of this title during the period of such time modification.

(j) Modification procedures

- (1) Any application filed under this section for a modification of the provisions of (A) subsection (b)(1)(B) of this section under subsection (h) of this section shall be filed not later than [1] the 365th day which begins after December 29, 1981, except that a publicly owned treatment works which prior to December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received

- modification under subsection (h) of this section, may apply for a modification of subsection (h) of this section in its own right not later than 30 days after February 4, 1987, and except as provided in paragraph (5);
- (B) subsection (b)(2)(A) of this section as it applies to pollutants identified in subsection (b)(2)(F) of this section shall be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title or not later than 270 days after December 27, 1977, whichever is later.
- (2) Subject to paragraph (3) of this section, any application for a modification filed under subsection (g) of this section shall not operate to stay any requirement under this chapter, unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities, and that there is a substantial likelihood that the applicant will succeed on the merits of such application. In the case of an application filed under subsection (g) of this section, the Administrator may condition any stay granted under this paragraph on requiring the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.
- (3) Compliance requirements under subsection (g). -
- (A) Effect of filing. - An application for a modification under subsection (g) of this section and a petition for listing of a pollutant as a pollutant for which modifications are authorized under such subsection shall not stay the requirement that the person seeking such modification or listing comply with effluent limitations under this chapter for all pollutants not the subject of such application or petition.
- (B) Effect of disapproval. - Disapproval of an application for a modification under subsection (g) of this section shall not stay the requirement that the person seeking such modification comply with all applicable effluent limitations under this chapter.
- (4) Deadline for subsection (g) decision. - An application for a modification with respect to a pollutant filed under subsection (g) of this section must be approved or disapproved not later than 365 days after the date of such filing; except that in any case in which a petition for listing such pollutant as a pollutant for which modifications are authorized under such subsection is approved, such application must be approved or disapproved not later than 365 days after the date of approval of such petition.
- (5) Extension of application deadline. -
- (A) In general. - In the 180-day period beginning on October 31, 1994, the city of San Diego, California, may apply for a modification pursuant to subsection (h) of this section of the requirements of subsection (b)(1)(B) of this section with respect to biological oxygen demand and total suspended solids in the effluent discharged into marine waters.
- (B) Application. - An application under this paragraph shall include a commitment by the applicant to implement a waste water reclamation program that, at a minimum, will
- (i) achieve a system capacity of 45,000,000 gallons of reclaimed waste water per day by January 1, 2010; and
 - (ii) result in a reduction in the quantity of suspended solids discharged by the applicant into the marine environment during the period of the modification.

(C) Additional conditions. - The Administrator may not grant a modification pursuant to an application submitted under this paragraph unless the Administrator determines that such modification will result in removal of not less than 58 percent of the biological oxygen demand (on an annual average) and not less than 80 percent of total suspended solids (on a monthly average) in the discharge to which the application applies.

(D) Preliminary decision deadline. - The Administrator shall announce a preliminary decision on an application submitted under this paragraph not later than 1 year after the date the application is submitted.

(k) Innovative technology

In the case of any facility subject to a permit under section 1342 of this title which proposes to comply with the requirements of subsection (b)(2)(A) or (b)(2)(E) of this section by replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction with an innovative system that has the potential for significantly lower costs than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 1342 of this title, in consultation with the Administrator) may establish a date for compliance under subsection (b)(2)(A) or (b)(2)(E) of this section no later than two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection, if it is also determined that such innovative system has the potential for industrywide application.

(l) Toxic pollutants

Other than as provided in subsection (n) of this section, the Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 1317(a)(1) of this title.

(m) Modification of effluent limitation requirements for point sources

(1) The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsections (b)(1)(A) and (b)(2)(E) of this section, and of section 1343 of this title, with respect to effluent limitations to the extent such limitations relate to biochemical oxygen demand and pH from discharges by an industrial discharger in such State into deep waters of the territorial seas, if the applicant demonstrates and the Administrator finds that

(A) the facility for which modification is sought is covered at the time of the enactment of this subsection by National Pollutant Discharge Elimination System permit number CA0005894 or CA0005282;

(B) the energy and environmental costs of meeting such requirements of subsections (b)(1)(A) and (b)(2)(E) of this section and section 1343 of this title exceed by an

- unreasonable amount the benefits to be obtained, including the objectives of this chapter;
- (C) the applicant has established a system for monitoring the impact of such discharges on a representative sample of aquatic biota;
- (D) such modified requirements will not result in any additional requirements on any other point or nonpoint source;
- (E) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;
- (F) the discharge is into waters where there is strong tidal movement and other hydrological and geological characteristics which are necessary to allow compliance with this subsection and section 1251(a)(2) of this title;
- (G) the applicant accepts as a condition to the permit a contractual [2] obligation to use funds in the amount required (but not less than \$250,000 per year for ten years) for research and development of water pollution control technology, including but not limited to closed cycle technology;
- (H) the facts and circumstances present a unique situation which, if relief is granted, will not establish a precedent or the relaxation of the requirements of this chapter applicable to similarly situated discharges; and
- (I) no owner or operator of a facility comparable to that of the applicant situated in the United States has demonstrated that it would be put at a competitive disadvantage to the applicant (or the parent company or any subsidiary thereof) as a result of the issuance of a permit under this subsection.
- (2) The effluent limitations established under a permit issued under paragraph (1) shall be sufficient to implement the applicable State water quality standards, to assure the protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, fauna, wildlife, and other aquatic organisms, and to allow recreational activities in and on the water. In setting such limitations, the Administrator shall take into account any seasonal variations and the need for an adequate margin of safety, considering the lack of essential knowledge concerning the relationship between effluent limitations and water quality and the lack of essential knowledge of the effects of discharges on beneficial uses of the receiving waters.
- (3) A permit under this subsection may be issued for a period not to exceed five years, and such a permit may be renewed for one additional period not to exceed five years upon a demonstration by the applicant and a finding by the Administrator at the time of application for any such renewal that the provisions of this subsection are met.
- (4) The Administrator may terminate a permit issued under this subsection if the Administrator determines that there has been a decline in ambient water quality of the receiving waters during the period of the permit even if a direct cause and effect relationship cannot be shown: Provided, That if the effluent from a source with a permit issued under this subsection is contributing to a decline in ambient water quality of the receiving waters, the Administrator shall terminate such permit.

(n) Fundamentally different factors

(1) General rule

The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) of this section or section 1317(b) of this title for a

facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that -

(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 1314(b) or 1314(g) of this title and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

(B) the application

- (i) is based solely on information and supporting data submitted to the Administrator during the rulemaking for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility; or

- (ii) is based on information and supporting data referred to in clause (i) and information and supporting data the applicant did not have a reasonable opportunity to submit during such rulemaking;

(C) the alternative requirement is no less stringent than justified by the fundamental difference; and

(D) the alternative requirement will not result in a non-water quality environmental impact which is markedly more adverse than the impact considered by the Administrator in establishing such national effluent limitation guideline or categorical pretreatment standard.

(2) Time limit for applications

An application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection must be submitted to the Administrator within 180 days after the date on which such limitation or standard is established or revised, as the case may be.

(3) Time limit for decision

The Administrator shall approve or deny by final agency action an application submitted under this subsection within 180 days after the date such application is filed with the Administrator.

(4) Submission of information

The Administrator may allow an applicant under this subsection to submit information and supporting data until the earlier of the date the application is approved or denied or the last day that the Administrator has to approve or deny such application.

(5) Treatment of pending applications

For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factors which is pending on February 4, 1987, shall be treated as having been submitted to the Administrator on the 180th day following February 4, 1987. The applicant may amend the application to take into account the provisions of this subsection.

(6) Effect of submission of application

An application for an alternative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

(7) Effect of denial

If an application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection is denied by the Administrator, the applicant must comply with such limitation or standard as established or revised, as the case may be.

(8) Reports

By January 1, 1997, and January 1 of every odd-numbered year thereafter, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the status of applications for alternative requirements which modify the requirements of effluent limitations under section 1311 or 1314 of this title or any national categorical pretreatment standard under section 1317(b) of this title filed before, on, or after February 4, 1987.

(o) Application fees

The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to subsections (c), (g), (i), (k),

(1) Application fees section 1326(a) of this title. All amounts collected by the Administrator under this subsection shall be deposited into a special fund of the Treasury entitled "Water Permits and Related Services" which shall thereafter be available for appropriation to carry out activities of the Environmental Protection Agency for which such fees were collected.

(p) Modified permit for coal remaining operations

(1) In general

Subject to paragraphs (2) through (4) of this subsection, the Administrator, or the State in any case which the State has an approved permit program under section 1342(b) of this title, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level or level of iron or manganese in any pre-existing discharge affected by the remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment, to set specific numerical effluent limitations in each permit.

(2) Limitations

The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. No discharge from, or affected by, the remining operation shall exceed State water quality standards established under section 1313 of this title.

(3) Definitions

For purposes of this subsection -

(A) Coal remining operation

The term "coal remining operation" means a coal mining operation which begins after February 4, 1987 at a site on which coal mining was conducted before August 3, 1977.

(B) Remined area

The term "remined area" means only that area of any coal remining operation on which coal mining was conducted before August 3, 1977.

(C) Pre-existing discharge

The term "pre-existing discharge" means any discharge at the time of permit application under this subsection.

(4) Applicability of strip mining laws

Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) to any coal remining operation, including the application of such Act to suspended solids.

Footnotes

[1] So in original. Probably should be "than".

[2] So in original. Probably should be "contractual".

United States Code
Title 33 (Navigation and Navigable Waters)
Chapter 26 (Water Pollution Prevention and Control)
Subchapter III (Standards and Enforcement)

Sec. 1318. Records and reports; inspections

(a) Maintenance; monitoring equipment; entry; access to information

Whenever required to carry out the objective of this chapter, including but not limited to

- (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter;
- (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;
- (3) any requirement established under this section; or
- (4) carrying out sections 1315, 1321, 1342, 1344 (relating to State permit programs), 1345, and 1364 of this title -

(A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require; and

(B) the Administrator or his authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of his credentials -

-(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and

-(ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such source is required to sample under such clause.

(b) Availability to public; trade secrets exception; penalty for disclosure of confidential information

Any records, reports, or information obtained under this section

- (1) shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards, and
- (2) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18. Any authorized representative of the Administrator (including an

authorized contractor acting as a representative of the Administrator) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

(c) Application of State law

Each State may develop and submit to the Administrator procedures under State law for inspection, monitoring, and entry with respect to point sources located in such State. If the Administrator finds that the procedures and the law of any State relating to inspection, monitoring, and entry are applicable to at least the same extent as those required by this section, such State is authorized to apply and enforce its procedures for inspection, monitoring, and entry with respect to point sources located in such State (except with respect to point sources owned or operated by the United States).

(d) Access by Congress

Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of Congress, to such committee.

United States Code
Title 33 (Navigation and Navigable Waters)
Chapter 26 (Water Pollution Prevention and Control)
Subchapter IV (Permits and Licenses)

Sec. 1341. - Certification

- (a) Compliance with applicable requirements; application; procedures; license suspension
- (1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 1311(b) and 1312 of this title, and there is not an applicable standard under sections 1316 and 1317 of this title, the State shall so certify, except that any such certification shall not be deemed to satisfy section 1371(c) of this title. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.
- (2) Upon receipt of such application and certification the licensing or permitting agency shall immediately notify the Administrator of such application and certification. Whenever such a discharge may affect, as determined by the Administrator, the quality of the waters of any other State, the Administrator within thirty days of the date of notice of application for such Federal license or permit shall so notify such other State, the licensing or permitting agency, and the applicant. If, within sixty days after receipt of such notification, such other State determines that such discharge will affect the quality of its waters so as to violate any water quality requirements in such State, and within such sixty-day period notifies the Administrator and the licensing or permitting agency in writing of its objection to the issuance of such license or permit and requests a public hearing on such objection, the licensing or permitting agency shall hold such a hearing. The Administrator shall at such hearing submit his evaluation and recommendations with respect to any such objection to the licensing or permitting agency. Such agency, based upon the recommendations of such State, the Administrator, and upon any additional evidence, if any, presented to the agency at the hearing, shall condition such license or permit in such manner as may be necessary to insure compliance with applicable water

quality requirements. If the imposition of conditions cannot insure such compliance such agency shall not issue such license or permit.

(3) The certification obtained pursuant to paragraph (1) of this subsection with respect to the construction of any facility shall fulfill the requirements of this subsection with respect to certification in connection with any other Federal license or permit required for the operation of such facility unless, after notice to the certifying State, agency, or Administrator, as the case may be, which shall be given by the Federal agency to whom application is made for such operating license or permit, the State, or if appropriate, the interstate agency or the Administrator, notifies such agency within sixty days after receipt of such notice that there is no longer reasonable assurance that there will be compliance with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title because of changes since the construction license or permit certification was issued in

(A) the construction or operation of the facility,

(B) the characteristics of the waters into which such discharge is made,

(C) the water quality criteria applicable to such waters or

(D) applicable effluent limitations or other requirements. This paragraph shall be inapplicable in any case where the applicant for such operating license or permit has failed to provide the certifying State, or, if appropriate, the interstate agency or the Administrator, with notice of any proposed changes in the construction or operation of the facility with respect to which a construction license or permit has been granted, which changes may result in violation of section 1311, 1312, 1313, 1316, or 1317 of this title.

(4) Prior to the initial operation of any federally licensed or permitted facility or activity which may result in any discharge into the navigable waters and with respect to which a certification has been obtained pursuant to paragraph (1) of this subsection, which facility or activity is not subject to a Federal operating license or permit, the licensee or permittee shall provide an opportunity for such certifying State, or, if appropriate, the interstate agency or the Administrator to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable effluent limitations or other limitations or other applicable water quality requirements will not be violated. Upon notification by the certifying State, or if appropriate, the interstate agency or the Administrator that the operation of any such federally licensed or permitted facility or activity will violate applicable effluent limitations or other limitations or other water quality requirements such Federal agency may, after public hearing, suspend such license or permit. If such license or permit is suspended, it shall remain suspended until notification is received from the certifying State, agency, or Administrator, as the case may be, that there is reasonable assurance that such facility or activity will not violate the applicable provisions of section 1311, 1312, 1313, 1316, or 1317 of this title.

(5) Any Federal license or permit with respect to which a certification has been obtained under paragraph (1) of this subsection may be suspended or revoked by the Federal agency issuing such license or permit upon the entering of a judgment under this chapter that such facility or activity has been operated in violation of the applicable provisions of section 1311, 1312, 1313, 1316, or 1317 of this title.

(6) Except with respect to a permit issued under section 1342 of this title, in any case where actual construction of a facility has been lawfully commenced prior to April 3, 1970, no certification shall be required under this subsection for a license or permit issued after April 3, 1970, to operate such facility, except that any such license or permit issued

without certification shall terminate April 3, 1973, unless prior to such termination date the person having such license or permit submits to the Federal agency which issued such license or permit a certification and otherwise meets the requirements of this section.

(b) Compliance with other provisions of law setting applicable water quality requirements

Nothing in this section shall be construed to limit the authority of any department or agency pursuant to any other provision of law to require compliance with any applicable water quality requirements. The Administrator shall, upon the request of any Federal department or agency, or State or interstate agency, or applicant, provide, for the purpose of this section, any relevant information on applicable effluent limitations, or other limitations, standards, regulations, or requirements, or water quality criteria, and shall, when requested by any such department or agency or State or interstate agency, or applicant, comment on any methods to comply with such limitations, standards, regulations, requirements, or criteria.

(c) Authority of Secretary of the Army to permit use of spoil disposal areas by Federal licensees or permittees

In order to implement the provisions of this section, the Secretary of the Army, acting through the Chief of Engineers, is authorized, if he deems it to be in the public interest, to permit the use of spoil disposal areas under his jurisdiction by Federal licensees or permittees, and to make an appropriate charge for such use. Moneys received from such licensees or permittees shall be deposited in the Treasury as miscellaneous receipts.

(d) Limitations and monitoring requirements of certification

Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under section 1316 of this title, or prohibition, effluent standard, or pretreatment standard under section 1317 of this title, and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section.

United States Code
Title 33 (Navigation and Navigable Waters)
Chapter 26 (Water Pollution Prevention and Control)
Subchapter IV (Permits and Licenses)

Sec. 1342. National pollutant discharge elimination system

(a) Permits for discharge of pollutants

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.

(5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objectives of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(i)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance.

(b) State permit programs

At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program

for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each submitted program unless he determines that adequate authority does not exist:

- (1) To issue permits which -
 - (A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, and 1343 of this title;
 - (B) are for fixed terms not exceeding five years; and
 - (C) can be terminated or modified for cause including, but not limited to, the following:
 - (i) violation of any condition of the permit;
 - (ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;
 - (iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
 - (D) control the disposal of pollutants into wells;
- (2)
 - (A) To issue permits which apply, and insure compliance with, all applicable requirements of section 1318 of this title; or
 - (B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title;
- (3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;
- (4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;
- (5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;
- (6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;
- (7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;
- (8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate

notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 1316 of this title if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 1311 of this title if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 1284(b), 1317, and 1318 of this title.

(c) Suspension of Federal program upon submission of State program; withdrawal of approval of State program; return of State program to Administrator

(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those discharges subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 1314(i)(2) of this title. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 1314(i)(2) of this title.

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(4) Limitations on partial permit program returns and withdrawals. - A State may return to the Administrator administration, and the Administrator may withdraw under paragraph (3) of this subsection approval, of -

(A) a State partial permit program approved under subsection (n)(3) of this section only if the entire permit program being administered by the State department or agency at the time is returned or withdrawn; and

(B) a State partial permit program approved under subsection (n)(4) of this section only if an entire phased component of the permit program being administered by the State at the time is returned or withdrawn.

(d) Notification of Administrator

(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2) No permit shall issue

(A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or
(B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

(3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.

(4) In any case where, after December 27, 1977, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing, or, if no hearing is requested within 90 days after the date of such objection, the Administrator may issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this chapter.

(e) Waiver of notification requirement

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

(f) Point source categories

The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.

(g) Other regulations for safe transportation, handling, carriage, storage, and stowage of pollutants

Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(h) Violation of permit conditions; restriction or prohibition upon introduction of pollutant by source not previously utilizing treatment works

In the event any condition of a permit for discharges from a treatment works (as defined in section 1292 of this title) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that

a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

(i) Federal enforcement not limited

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

(j) Public information

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

(k) Compliance with permits

Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of

(1) section 1311, 1316, or 1342 of this title, or

(2) section 407 of this title, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on October 18, 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date which source is not subject to section 407 of this title, the discharge by such source shall not be a violation of this chapter if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

(l) Limitation on permit requirement

(1) Agricultural return flows

The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

(2) Stormwater runoff from oil, gas, and mining operations

The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

(m) Additional pretreatment of conventional pollutants not required

To the extent a treatment works (as defined in section 1292 of this title) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 1314(a)(4) of this title into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 1317(b)(1) of this title. Nothing in this subsection shall affect the Administrator's authority under sections 1317 and 1319 of this title, affect State and local authority under sections 1317(b)(4) and 1370 of this title, relieve such treatment works of its obligations to meet requirements established under this chapter, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

(n) Partial permit program

(1) State submission

The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

(2) Minimum coverage

A partial permit program under this subsection shall cover, at a minimum, administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b) of this section.

(3) Approval of major category partial permit programs

The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if -

(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b) of this section.

(4) Approval of major component partial permit programs

The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) of this section if -

(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b) of this section; and

(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) of this section by a specified date not more than 5 years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.

(o) Anti-backsliding

(1) General prohibition

In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 1314(b) of this title subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the

comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of section 1311(b)(1)(C) or section 1313(d) or (e) of this title, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with section 1313(d)(4) of this title.

(2) Exceptions

A permit with respect to which paragraph (1) applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if -

(A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)

- (i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

- (ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B) of this section;

(C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) the permittee has received a permit modification under section 1311(c), 1311(g), 1311(h), 1311(i), 1311(k), 1311(n), or 1326(a) of this title; or

(E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification). Subparagraph (B) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this chapter or for reasons otherwise unrelated to water quality.

(3) Limitations

In no event may a permit with respect to which paragraph (1) applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 1313 of this title applicable to such waters.

(p) Municipal and industrial stormwater discharges

(1) General rule

Prior to October 1, 1994, the Administrator or the State (in the case of a permit program approved under this section) shall not require a permit under this section for discharges composed entirely of stormwater.

(2) Exceptions

Paragraph (1) shall not apply with respect to the following stormwater discharges:

- (A) A discharge with respect to which a permit has been issued under this section before February 4, 1987.
- (B) A discharge associated with industrial activity.
- (C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.
- (D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.
- (E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(3) Permit requirements

(A) Industrial discharges

Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 1311 of this title.

(B) Municipal discharge

Permits for discharges from municipal storm sewers -

- (i) may be issued on a system- or jurisdiction-wide basis;
- (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
- (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

(4) Permit application requirements

(A) Industrial and large municipal discharges

Not later than 2 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraphs (2)(B) and (2)(C). Applications for permits for such discharges shall be filed no later than 3 years after February 4, 1987. Not later than 4 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(B) Other municipal discharges

Not later than 4 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(D). Applications for permits for such discharges shall be filed no later than 5 years after February 4, 1987. Not later than 6 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(5) Studies

The Administrator, in consultation with the States, shall conduct a study for the purposes of -

- (A) identifying those stormwater discharges or classes of stormwater discharges for which permits are not required pursuant to paragraphs (1) and (2) of this subsection;
- (B) determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and
- (C) establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality.

Not later than October 1, 1988, the Administrator shall submit to Congress a report on the results of the study described in subparagraphs (A) and (B). Not later than October 1, 1989, the Administrator shall submit to Congress a report on the results of the study described in subparagraph (C).

(6) Regulations

Not later than October 1, 1993, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

United States Code
Title 33 (Navigation and Navigable Waters)
Chapter 26 (Water Pollution Prevention and Control)
Subchapter V (General Provisions)

Sec. 1362. - Definitions

Except as otherwise specifically provided, when used in this chapter:

- (1) The term "State water pollution control agency" means the State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.
- (2) The term "interstate agency" means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.
- (3) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.
- (4) The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 1288 of this title.
- (5) The term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.
- (6) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean
 - (A) "sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces" within the meaning of section 1322 of this title; or
 - (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.
- (7) The term "navigable waters" means the waters of the United States, including the territorial seas.
- (8) The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.
- (9) The term "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

- (10) The term "ocean" means any portion of the high seas beyond the contiguous zone.
- (11) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.
- (12) The term "discharge of a pollutant" and the term "discharge of pollutants" each means
- (A) any addition of any pollutant to navigable waters from any point source,
 - (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.
- (13) The term "toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.
- (14) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.
- (15) The term "biological monitoring" shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants
- (A) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and
 - (B) at appropriate frequencies and locations.
- (16) The term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.
- (17) The term "schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.
- (18) The term "industrial user" means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category of "Division D - Manufacturing" and such other classes of significant waste producers as, by regulation, the Administrator deems appropriate.
- (19) The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.
- (20) The term "medical waste" means isolation wastes; infectious agents; human blood and blood products; pathological wastes; sharps; body parts; contaminated bedding; surgical wastes and potentially contaminated laboratory wastes; dialysis wastes; and such additional medical items as the Administrator shall prescribe by regulation.
- (21) Coastal recreation waters. -
- (A) In general. - The term "coastal recreation waters" means -
 - (i) the Great Lakes; and

- (ii) marine coastal waters (including coastal estuaries) that are designated under section 1313(c) of this title by a State for use for swimming, bathing, surfing, or similar water contact activities.
- (B) Exclusions. - The term "coastal recreation waters" does not include -
 - (i) inland waters; or
 - (ii) waters upstream of the mouth of a river or stream having an unimpaired natural connection with the open sea.
- (22) Floatable material. -
 - (A) In general. - The term "floatable material" means any foreign matter that may float or remain suspended in the water column.
 - (B) Inclusions. - The term "floatable material" includes -
 - (i) plastic;
 - (ii) aluminum cans;
 - (iii) wood products;
 - (iv) bottles; and
 - (v) paper products.
- (23) Pathogen indicator. - The term "pathogen indicator" means a substance that indicates the potential for human infectious disease.

Clean Water Act

Section 308. Inspections, monitoring, and entry

- (a) Whenever required to carry out the objective of this Act, including but not limited to
 - (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this Act;
 - (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;
 - (3) any requirement established under this section; or
 - (4) carrying out section 305, 311, 402, 404 (relating to State permit programs), 405, and 504 of this Act -
 - (A) the Administrator shall require the owner or operator of any point source to (i) establish and maintains such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require; and
 - (B) the Administrator or his authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of his credentials -
 - (i) shall have a right of entry to, upon, or through any premises in which an effluent source is located in or which any records required to be maintained under clause (A) of this subsection are located, and
 - (ii) may at reasonable times have access to any copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such sources is required to sample under such clause.
- (b) Any records, reports, or information obtained under this section
 - (1) shall, in the case of effluent data, be related to any applicable effluent limitations, toxic pretreatment, or new source performance, standards, and
 - (2) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than the effluent data), to which the Administrator has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code. Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports, or information to other officers, employees,

or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.

(c) Each State may develop and submit to the Administrator procedures under State law for inspection, monitoring, and entry with respect to point sources located in such State. If the Administrator finds that the procedures and the law of any State relating to inspection, monitoring, and entry are applicable to at least the same extent as those required by this section, such State is authorized to apply and enforce its procedures for inspection, monitoring, and entry with respect to point sources located in such State (except with respect to point sources owned or operated by the United States).

(d) Access by Congress.- Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by Administrator (or any representative of the Administrator) under this Act shall be made available, upon written request of any duly authorized committee of Congress, to such committee.

Appendix 2. Permit Application Form 2B

FORM 2B NPDES	EPA U.S. ENVIRONMENTAL PROTECTION AGENCY APPLICATIONS FOR PERMIT TO DISCHARGE WASTEWATER CONCENTRATED ANIMAL FEEDING OPERATIONS AND AQUATIC ANIMAL PRODUCTION FACILITIES					
1. GENERAL INFORMATION						
A. TYPE OF BUSINESS <input type="checkbox"/> 1. Concentrated Animal Feeding Operation (complete items B, C, D, and Section II) <input type="checkbox"/> 2. Concentrated Aquatic Animal Production Facility (complete items B, C, and section III)	B. CONTACT INFORMATION Owner/or Operator Name: _____ Telephone: () _____ Address: _____ Facsimile: () _____ City: _____ State: _____ Zip Code: _____	C. FACILITY OPERATION STATUS <input type="checkbox"/> 1. Existing Facility <input type="checkbox"/> 2. Expanding Facility <input type="checkbox"/> 3. Proposed Facility				
D. FACILITY INFORMATION Name: _____ Telephone: () _____ Address: _____ Facsimile: () _____ City: _____ State: _____ Zip Code: _____ County: _____ Latitude: _____ Longitude: _____ If contract operation: Name of Integrator : _____ Address of Integrator: _____						
II. CONCENTRATED ANIMAL FEEDING OPERATION CHARACTERISTICS						
A. TYPE AND NUMBER OF ANIMALS		B. Manure, Litter and/or Wastewater Production and Use				
1. TYPE	2. ANIMALS <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; text-align: center; padding: 5px;">NO. IN OPEN CONFINEMENT</td> <td style="width:50%; text-align: center; padding: 5px;">NO. HOUSED UNDER ROOF</td> </tr> <tr> <td style="height: 40px;"></td> <td></td> </tr> </table>	NO. IN OPEN CONFINEMENT	NO. HOUSED UNDER ROOF			1. How much manure, litter and wastewater is generated annually by the facility? _____ tons _____ gallons 2. If land applied how many acres of land under the control of the applicant are available for applying the CAFOs manure/litter/wastewater? _____ acres 3. How many tons of manure or litter, or gallons of wastewater produced by the CAFO will be transferred to other persons? _____ tons/gallons (<i>circle one</i>)
NO. IN OPEN CONFINEMENT	NO. HOUSED UNDER ROOF					
C. TOTAL NUMBER OF ANIMALS CONFINED AT THE FACILITY _____						
D. A TOPOGRAPHIC MAP OF THE ENTIRE OPERATION						
E. TYPE OF CONTAINMENT, STORAGE AND CAPACITY 1. Type of containment: _____ Total capacity: _____ gallons 2. Report the number of acres contributing drainage: _____ acres 3. Type of storage: _____ Total capacity: _____ days						

F. NUTRIENT MANAGEMENT PLAN

1. Has a nutrient management plan been developed and is being implemented for the facility? ☐ Yes ☐ No
2. If no, when will the nutrient management plan be developed? Date: _____
3. The date of the last review or revision of the nutrient management plan. Date: _____
4. If not land applying, describe alternative use(s) of manure, litter and or wastewater:

G. CONSERVATION PRACTICES

Please check any of the following conservation practices that are being implemented at the facility to control runoff and protect water quality:

☐ Buffers ☐ Setbacks ☐ Conservation tillage ☐ Constructed wetlands ☐ Infiltration field ☐ Grass filter ☐ Terrace

III. CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITY CHARACTERISTICS

A. For each outfall give the maximum daily flow, maximum 30-day flow, and the long-term average flow.				B. Indicate the total number of ponds, raceways, and similar structures in your facility.		
1. Outfall No.	2. Flow (<i>gallons per day</i>)			1. Ponds	2. Raceways	3. Other
	a. Maximum Daily	b. Maximum 30 Day	c. Long Term Average	C. Provide the name of the receiving water and the source of water used by your facility.		
				1. Receiving Water		2. Water Source

D. List the species of fish or aquatic animals held and fed at your facility. For each species, give the total weight produced by your facility per year in pounds of harvestable weight, and also give the maximum weight present at any one time.

1. Cold Water Species			2. Warm Water Species		
a. Species	b. Harvestable Weight (<i>pounds</i>)		a. Species	b. Harvestable Weight (<i>pounds</i>)	
	(1) Total Yearly	(2) Maximum		(1) Total Yearly	(2) Maximum

E. Report the total pounds of food during the calendar month of maximum feeding.	1. Month	2. Pounds of Food
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IV. CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

A. Name and Official Title (*print or type*)

B. Phone No. ()

C. Signature

D. Date Signed

GENERAL

This form must be completed by all applicants who check “yes” to Item II-B in Form 1. Not all animal feeding operations or fish farms are required to obtain NPDES permits. Exclusions are based on size. See the description of these statutory and regulatory exclusions in the General Instructions that accompany Form 1.

For aquatic animal production facilities, the size cutoffs are based on whether the species are warm water or cold water, on the production weight per year in harvestable pounds, and on the amount of feeding in pounds of food (*for cold water species*). Also, facilities which discharge less than 30 days per year, or only during periods of excess runoff (*for warm water fish*) are not required to have a permit.

Refer to the Form 1 instructions to determine where to file this form.

Item I-A

See the note above and the General Instructions which accompany Form 1 to be sure that your facility is a “concentrated animal feeding operation” (CAFO).

Item I-B

Use this space to give owner/operator contact information.

Item I-C

Check “proposed” if your facility is not now in operation or “expanding” if your facility does not currently meet the definition of a CAFO in accordance with the information found in the General Instructions that accompany Form 1.

Item I-D

Use this space to give a complete legal description of your facilities location including name, address, and latitude/longitude. Also, the if a contract grower, the name and address of the integrator.

Item II

Supply all information in item II if you checked (1) in item I-A.

Item II-A

Give the maximum number of each type of animal in open confinement or housed under roof (either partially or totally) which are held at your facility for a total of 45 days or more in any 12 month period.

Use the following categories for types of animal:

Mature Dairy Cattle; Veal; Cattle (other than mature dairy or veal); Swine (over 25 kilograms); Swine (less than 25 kilogram); Horses; Sheep or Lambs; Turkeys; Chickens (Laying hens/Broilers); Ducks, etc.

Item II-B

Provide the total amount of manure, litter and wastewater generated annually by the facility. Identify if manure, litter and wastewater generated by the facility is to be land applied and the number of acres, under the control of the CAFO operator, suitable for land application. If the answer to question 3 is yes, provide the estimated annual quantity of manure, litter and wastewater that the applicant plans to transfer off-site.

Item II-C

Provide the total number of animals confined at the facility.

Item II-D

Provide a topographic map of the of the entire operation including the production area and land under the operational control of the CAFO operator where manure, litter and/or wastewater are applied.

Item II-E

1. Provide information on the type of containment (e.g., lagoon, holding pond, evaporation pond, etc) and the capacity of the containment structure.
2. The number of acres that are drained and collected in the containment structure.
3. Identify the type of storage (e.g., anaerobic lagoon, storage pond, evaporation pond, aboveground storage tanks, belowground storage tanks, roofed storage shed, concrete pad, impervious soil pad, etc.) for the manure, litter and/or wastewater. Give the capacity of this storage in days.

Item II-F

Provide information concerning the status of the development and implementation of a nutrient management plan for the facility. In those cases where the nutrient management plan has not been completed, provide an estimated date of development and implementation. If not land applying describe the alternative uses of the manure, litter and wastewater (e.g., composting, pelletizing, energy generation, etc.).

Item II-G

Check any of the identified conservation practices that are being implemented at the facility to control runoff and protect water quality.

Item III

Supply all information in Item III if you checked (2) in Item I-A.

Item III-A

Outfalls should be numbered to correspond with the map submitted in Item XI of Form 1. Values given for flow should be representative of your normal operation. The maximum daily flow is the maximum measured flow occurring over a calendar day. The maximum 30-day flow is the average of measured daily flow over the calendar month of highest flow. The long-term average flow is the average of measure daily flows over a calendar year.

Item III-B

Give the total number of discrete ponds or raceways in your facility. Under “other,” give a descriptive name of any structure which is not a pond or a raceway but which results in discharge to waters of the United States.

Item III-C

Use names for receiving water and source of water which correspond to the map submitted in Item XI of Form 1.

Item III-D

The names of fish species should be proper, common, or scientific names as given in special Publication No. 6 of the American Fisheries Society. “A List of Common and Scientific Names of Fishes from the United States and Canada.” The values given for total weight produced by your facility per year and the maximum weight present at any one time should be representative of your normal operation.

Item III-E

The value given for maximum monthly pounds of food should be representative of your normal operation.

Item IV

The Clean Water Act provides for severe penalties for submitting false information on this application form.

Section 309(C)(2) of the Clean Water Act provides that “Any person who knowingly makes any false statement, representation, or certification in any application...shall upon conviction, be punished by a fine of no more than \$10,000 or by imprisonment for not more than six months, or both.”

	<p>Federal regulations require the certification to be signed as follows:</p> <p>A. For corporation, by a principal executive officer of at least the level of vice president.</p> <p>B. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or</p> <p>C. For a municipality, State, Federal, or other public facility, by either a principal executive officer or ranking elected official.</p> <p>Paper Reduction Act Notice</p> <p>The Public reporting burden for this collection of information estimated to average 4 hours per response. The estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information to the chief, Information Policy Branch (PM-223), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, marked Attention: Desk Officer for EPA.</p> <p>****DRAFT 8/02****</p>
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Appendix 3. Burden and Cost Exhibits

Exhibit A.1

Facility Cost and Burden Estimates for NPDES Permit Application and BAT Activities

Exhibit A.1a

Start-up Activities

	Response Frequency	Burden per Response	Annual Burden	Annual Labor Cost ¹
Activity	A	B	C	C*wage
Read and Understand Rule	one time	2	2	\$44
Determine Requirements and Plan	one time	1	1	\$22

1. Labor cost assumes a farm manager labor cost of \$21.83 per hour.

Exhibit A.1b

NPDES Permit Application Activities

	Response Frequency	Burden per Response	Annual Burden	Annual Labor Cost ¹
Activity	A	B	C	C*wage
Complete Notice of Intent for General Permit ²	every 5 years	9	9	\$196
Complete Individual Permit Application ³	every 5 years	9	9	\$196
Inspection ⁴	every 5 years	4	4	\$87

1. Labor cost assumes a farm manager labor cost of \$21.83 per hour.

2. EPA assumes that 70% of CAFOs will receive General Permits.

3. EPA assumes that 30% of CAFOs will receive Individual Permits.

4. EPA assumes that approximately 20% of CAFOs possessing Permits will require inspections annually. Thus, on average, each CAFO will be inspected once every five years

Exhibit A.1c

Data Collection, Record Keeping, and Reporting Activities

	Response Frequency	Burden per Response	Annual Burden	Annual Labor Cost ¹
Activity	A	B	C	C*wage
Prepare and Submit Annual Report	every year	1	1	\$22
Record Off-site Transfers of Manure ²	every year	14	14	\$154

1. Labor cost assumes a farm manager labor cost of \$21.83 per hour to prepare the annual report and a laborer cost of \$11 per hour to keep off-site transfer records.

2. Assumes no weight tickets or truck scales are needed for recording transfers.

Exhibit A.1d

Nutrient Management Plan

	Response Frequency	Burden per Response	Annual Burden	Annual Labor Cost ¹
Activity	A	B	C	C*wage
Develop Nutrient Management Plan-Land Appl. ²	every 5 years	52	52	\$1,876

1. Labor cost assumes an agronomist labor cost of \$36.23 for the plan development.

2. The burden estimate is a weighted average of the burden estimates derived by animal subcategory. See Exhibit A.1h for detail.

Exhibit A.1e

ELG Requirements

	Response Frequency	Burden per Response	Annual Burden	Annual Labor Cost ¹
Activity	A	B	C	C*wage
Visual Inspections ²	every year	13	13	\$143
Inspect Manure Application Equipment ³	every year	4	4	\$44
Collect and Send Manure Sample ⁴	every year	2	2	\$25
Collect and Send Soil Sample ⁵	every 5 years	9	9	\$95
Record Keeping ⁶	every year	80	80	\$880

1. The labor cost for all activities assumes a farm laborer cost of \$11 per hour.

2. The visual inspection burden per response assumes that weekly inspections require 15 minutes (i.e., 52*0.25 hours =13 hours).

3. The analysis assumes that 76% of all CAFOs land apply manure to some extent.

4. The manure sample burden and cost is based on a weighted average of estimates for wet and dry storage facilities. See Exhibit A.1i for details.

5. The soil sample burden is based on a weighted average of estimates derived by animal subcategory. See Exhibit A.1j for details.

Exhibit A.1 continued

Exhibit A.1f

Capital Costs for Facilities

	Response Frequency	Capital Cost	Annual Cost ¹
Activity	A	B	C
Purchase of a Soil Auger for Sampling	one time	\$27	\$3.88
Cost for Production Area portion NMP ²	one time	\$1,050	\$149.50
Purchase of a Manure Sampler	one time	\$33	\$4.66
Installation of Depth Markers ³	one time	\$33	\$4.66

1. EPA estimates the annual cost on Capital Expenditures, over 10 years, using a amortization rate of 7%.

2. EPA assumes that the owner will consult an engineer and document waste management practices for the production area portion of the NMP.

3. Only those facilities with liquid waste storage facilities will install depth markers.

Exhibit A.1g

O&M Costs for Facilities

	Response Frequency	Cost per Response	Annual Cost
Activity	A	B	C
Laboratory Analysis of Soil Sample ¹	every 3 years	\$94	\$94
Laboratory Analysis of Manure Sample ²	every year	\$127	\$127
Use of Tractor during Manure Calibration ³	every year	\$0	\$0
Other Direct Costs for Record Keeping ⁴	every year	\$88	\$88

1. The soil sample O&M cost is based on a weighted average of estimates derived by animal subcategory. See Exhibit A.1k for details.

2. The laboratory analysis cost per sample is \$43.66. The cost reported here is based on the weighted average number of samples (2.2) shown in Exhibit A.1i.

3. EPA assumes that calibratio of spreading equipment will require two hours of tractor usage at \$32.50 an hour.

4. Annual record keeping ODC costs are assumed to be 10% of the labor costs for record keeping.

Exhibit A.1h

Weighted Average NMP Development Burden and Cost

	Response Frequency	Burden Per Response ¹	Annual Burden	Cost per Response
CAFO Category (average acreage)	A	B	C	D
Beef (1045 acres)	every 5 years	157	157	\$5,703
Dairy (126 acres)	every 5 years	19	19	\$688
Heifers (138 acres)	every 5 years	21	21	\$753
Veal (100 acres)	every 5 years	15	15	\$546
Swine (373 acres)	every 5 years	56	56	\$2,035
Horses (356 acres)	every 5 years	54	54	\$1,943
Layers (96 acres)	every 5 years	14	14	\$524
Broilers: 1427 facilities (64 acres)	every 5 years	10	10	\$349
Turkeys (270 acres)	every 5 years	41	41	\$1,473
Ducks (143 acres)	every 5 years	22	22	\$780
Weighted Averages		52	52	\$1,876

1. The burden estimates were derived from the per-facility plan development cost estimates by dividing cost by an agronomic labor cost of \$36.23 per hour. The total costs were based on an average cost of \$5.46 per acre and the average CAFO acreages shown.

Exhibit A.1 continued

Exhibit A.1i

Weighted Average Manure Sample Burden and Cost

	Response Frequency	Burden Per Response ¹	Annual Burden	Annual Cost
Storage Category	A	B	C	C*wage
Wet Storage (collect and send 2 samples per year)	every year	2	2	\$22
Dry Storage (collect and send 6 samples per year)	every year	3	3	\$33
Weighted Averages (2.9 samples)		2.23	2.23	\$25

1. There are two sampling events per year. The burden estimates per sample taken assume that sample collection from dry poultry operations requires one to obtain and prepare a sample from the main manure storage area and an additional 0.25 hours to collect samples from each poultry house. Assuming that facilities have an average of two houses, the total burden per sampling event is 1.5 hours. Other facilities will only collect a sample from the manure storage area and, thus, incur a burden of one hour per event.

Exhibit A.1j

Weighted Average Soil Sample Burden and Cost

	Response Frequency	Burden Per Facility ¹	Annual Burden	Annual Cost
CAFO Category (average acreage)	A	B	C	C*wage
Beef (1045 acres)	every 3 years	26.1	26.1	\$287
Dairy (126 acres)	every 3 years	3.2	3.2	\$35
Heifers (138 acres)	every 3 years	3.5	3.5	\$38
Veal (100 acres)	every 3 years	2.5	2.5	\$28
Swine (373 acres)	every 3 years	9.3	9.3	\$103
Horses (356 acres)	every 3 years	8.9	8.9	\$98
Layers (96 acres)	every 3 years	2.4	2.4	\$26
Broilers: 1427 facilities (64 acres)	every 3 years	1.6	1.6	\$18
Turkeys (270 acres)	every 3 years	6.8	6.8	\$74
Ducks (143 acres)	every 3 years	3.6	3.6	\$39
Weighted Averages		8.6		\$95

1. The burden estimates were derived by dividing the average farm size by the laborer burden of 40 acres per hour.

Exhibit A.1k

Weighted Average Soil Sample O&M Cost

	Response Frequency	Cost per Response ¹	Annual Cost
CAFO Category (average acreage)	A	B	C
Beef (1045 acres)	every 3 years	\$285	\$285
Dairy (126 acres)	every 3 years	\$34	\$34
Heifers (138 acres)	every 3 years	\$38	\$38
Veal (100 acres)	every 3 years	\$27	\$27
Swine (373 acres)	every 3 years	\$102	\$102
Horses (356 acres)	every 3 years	\$97	\$97
Layers (96 acres)	every 3 years	\$26	\$26
Broilers: 1427 facilities (64 acres)	every 3 years	\$17	\$17
Turkeys (270 acres)	every 3 years	\$74	\$74
Ducks (143 acres)	every 3 years	\$39	\$39
Weighted Averages		\$94	\$94

1. The soil sample O&M costs assume an average cost to analyze samples of \$1.09 per 4 acres.

Exhibit A.2

State Burden and Cost Estimates for Activities

Exhibit A.2a

Program Modification Request

	Response Frequency	Burden per Response	Annual Labor Cost ¹
Activity ²	A	B	
Gather and Analyze Data			
Plan Activities			
Prepare MOA			
Prepare & Submit Application for Program Approval			
Develop non-NPDES Rules (As Needed)			
	one time	250	\$7,445

1. Labor cost assumes a state inspector labor cost of \$29.78 per hour.

2. EPA's labor hour estimate is based on program modification and approval burdens in an active NPDES ICR ("NPDES and Sewage Sludge Management State Program Requirements," OMB NO. 2040-0057, EPA ICR 0168.07), which estimates 250 hours per State to prepare and submit a request for NPDES Program Modification under 40 C.F.R. Part 123.62.

Exhibit A.2b

Initial State General NPDES Permit Application Activities

	Response Frequency	Burden per Response	Annual Labor Cost ¹
Activity	A	B	
Permit Development	one time	300	\$8,934
Public Notice/response to comments	one time	570	\$16,975
Public Hearings	one time	420	\$12,508
Review and Approve NOIs/ Record Keeping	9,889 CAFOs	4	\$119

1. Labor cost assumes a state inspector labor cost of \$29.78 per hour.

Exhibit A.2c

State Individual Permit Application Activities

	Response Frequency	Burden per Response	Annual Labor Cost ¹
Activity	A	B	
Review Form 1 & 2B, Notify Public, Respond to Comments	4,238 CAFOs	100	\$2,978
Public Hearing ²	509 CAFOs	200	\$5,956

1. Labor cost assumes a state inspector labor cost of \$29.78 per hour.

2. EPA assumed that 12% of individual permits would require a public hearing.

Exhibit A.2 Continued

Exhibit A.2d

State Annual Permit Reporting Activities

	Response Frequency	Burden per Response	Annual Labor Cost ¹
Activity	A	B	
Facility Inspection ²	5,853 CAFOs	16	\$476
Annual Report Review	14,127 CAFOs	4	\$119

1. Labor cost assumes a state inspector labor cost of \$29.78 per hour.

2. EPA assumed that 20% of CAFOs were inspected at an average burden per inspection of 16 hrs.

Exhibit A.2e

State O&M Costs

	Response Frequency	Burden per Response	Annual Cost ¹
Activity	A	B	
Public Notice for General Permit	one time	--	\$1,060
Public Notice for Individual Permit	4,238 CAFOs		\$1,060
Public Hearing Notice	509 CAFOs		\$1,060

1. The cost estimate assumes that each quarterly publication will cost \$1060.

Exhibit A.3

Federal Burden and Cost Estimates for Activities

Exhibit A.3a

Review of State Modification Request

	Frequency of Response ¹	Burden per State	Labor Cost per State
Activity	A	B	
	43 States	50	\$1,997

1. This is a one time burden that EPA assumes it will incur for each NPDES authorized State.

Exhibit A.3b

Initial Federal General NPDES Permit Application Activities

	Response Frequency	Burden per Response	Annual Labor Cost ¹
Activity	A	B	
Review and approve NOIs / Record Keeping	256 CAFOs	4	\$160

1. Labor cost assumes a cost of \$39.94 per hour for a GS 12 Step 1 federal employee.

Exhibit A.3c

Federal Individual Permit Application Activities

	Response Frequency	Burden per Response	Annual Labor Cost ¹
Activity	A	B	
Review Form 1 & 2B, Notify Public, Respond to Comments	110 CAFOs	100	\$3,994
Public Hearing ²	13 CAFOs	200	\$7,988

1. Labor cost assumes a cost of \$39.94 per hour for a GS 12 Step 1 federal employee.

2. EPA assumed that 12% of individual permits would require a public hearing.

Exhibit A.3d

Federal Annual Permit Activities

	Response Frequency	Burden per Response	Annual Labor Cost ¹
Activity	A	B	
Facility Inspections ²	187 CAFOs	16	\$639
Review Annual Reports	366 CAFOs	4	\$160

1. Labor cost assumes a cost of \$39.94 per hour for a GS 12 Step 1 federal employee.

2. EPA assumed 20% of facilities were inspected annually an average burden per inspection of 16 hrs.

Exhibit A.3e

Federal O&M Costs

	Response Frequency	Burden per Response	Annual Cost ¹
Activity	A	B	
Public Notice for Individual Permit	110 CAFOs		\$1,060
Public Hearing Notice	13 CAFOs		\$1,060

1. The cost estimate assumes that each quarterly publication will cost \$1060.

Exhibit A.4

Respondents for the ICR Approval Period Year by Year by Activity

Facilities¹

Activities	Year 1	Year 2	Year 3	3 Year Total	Annual Average
	Jan. 2003- Dec. 2003	Jan. 2004- Dec. 2004	Jan. 2005- Dec. 2005		
Start-up Activities	9,675	1,294	3,524	14,493	4,831
Permit Application Activities					
General Permit Application Requirements	6,772	906	2,467	10,145	3,382
Individual Permit Application Requirements	2,902	388	1,057	4,348	1,449
NPDES Requirements					
Annual Report	9,675	10,969	14,493	35,137	11,712
Nutrient Management Plan Development	9,675	1,294	3,524	14,493	4,831
Compliance Inspection	1,935	2,194	2,899	7,027	2,342
Record Keeping of Transfers	5,422	6,682	9,938	22,041	7,347
Best Available Technology Requirements					
Visual Inspections	9,675	10,969	14,493	35,137	11,712
Manure Application Equipment Inspection	6,022	7,316	10,840	24,179	8,060
Manure Sampling	9,675	10,969	14,493	35,137	11,712
Soil Sampling	6,022	1,294	3,524	10,840	3,613
ELG and NPDES Record Keeping	9,675	10,969	14,493	35,137	11,712
Total Respondents	9,675	10,969	14,493	35,137	11,712

1. It is assumed that facilities will begin annual activities in the same year that they receive their permit. Thus, facilities applying for permits in 2003 will perform annual activities three times during the period and will be counted as three respondents.

States¹

Activities	Year 1	Year 2	Year 3	3 Year Total	Annual Average
	Jan. 2003- Dec. 2003	Jan. 2004- Dec. 2004	Jan. 2005- Dec. 2005		
Program Modification Request	21	22	0	43	43
Review Annual Reports	9,375	10,629	14,044	34,048	11,349
General Permit Activities					
General Permit Development/ Public notice/ Response to comments/ Public Hearings	21	22	0	43	43
Review and Approve NOIs	6,562	878	2,390	9,831	3,277
Facility Inspections (General Permit)	1,312	1,488	1,966	4,767	1,589
Individual Permit Activities					
Review Permit Applications/ Public Notification/ Response to Comments/ Issue Permit and Recordkeeping	2,812	376	1,024	4,213	1,404
Public Hearing	337	45	123	506	169
Facility Inspections (Individual Permit)	562	638	843	2,043	681
Respondents	21	22	43	86	29

1. To calculate the total respondents over three years, States are counted for each year they perform any type of response. Thus, the three-year total estimate includes States counted more than once.

Total for Facilities and States

Respondent	Year 1	Year 2	Year 3	3 Year Total	Annual Average
	Sep. 2001- Aug. 2002	Sep. 2002- Aug. 2003	Sep. 2003- Aug. 2004		
Facilities	9,675	10,969	14,493	35,137	11,712
States and Territories	21	22	43	86	43
Yearly Total	9,696	10,991	14,536	35,223	11,755

Exhibit A.5

Responses for the ICR Approval Period Year by Year by Activity

Facilities¹

Activities	Year 1	Year 2	Year 3	3 Year Total	Annual Average
	Jan. 2003- Dec. 2003	Jan. 2004- Dec. 2004	Jan. 2005- Dec. 2005		
Start-up Activities	9,675	1,294	3,524	14,493	4,831
Permit Application Activities					
General Permit Application Requirements	6,772	906	2,467	10,145	3,382
Individual Permit Application Requirements	2,902	388	1,057	4,348	1,449
NPDES Requirements					
Annual Report	9,675	10,969	14,493	35,137	11,712
Nutrient Management Plan Development	9,675	1,294	3,524	14,493	4,831
Compliance Inspection	1,935	2,194	2,899	7,027	2,342
Record Keeping of Transfers	5,422	6,682	9,938	22,041	7,347
Best Available Technology Requirements					
Visual Inspections	9,675	10,969	14,493	35,137	11,712
Manure Application Equipment Inspection	6,022	7,316	10,840	24,179	8,060
Manure Sampling	9,675	10,969	14,493	35,137	11,712
Soil Sampling	6,022	1,294	3,524	10,840	3,613
ELG and NPDES Record Keeping	9,675	10,969	14,493	35,137	11,712
Total Responses	87,123	65,246	95,745	248,114	82,705

1. It is assumed that facilities will begin annual activities in the same year that they apply for permit coverage.

States

Activities	Year 1	Year 2	Year 3	3 Year Total	Annual Average
	Jan. 2003- Dec. 2003	Jan. 2004- Dec. 2004	Jan. 2005- Dec. 2005		
Program Modification Request	21	22	0	43	14
Review Annual Reports	9375	10629	14044	34,048	11,349
General Permit Activities					
General Permit Development/ Public notice/ Response to comments/ Public Hearings	21	22	0	43	14
Review and Approve NOIs	6562	878	2390	9,831	3,277
Facility Inspections (General Permit)	0	0	0	0	0
Individual Permit Activities					
Review Permit Applications/ Public Notification/ Response to Comments/ Issue Permit and Recordkeeping	2812	376	1024	4,213	1,404
Public Hearing	337	45	123	506	169
Facility Inspections	1875	2126	2809	6,810	2,270
Total Responses	21,004	14,098	20,390	55,492	18,497

Total for Responses (Facilities and States)

	Year 1	Year 2	Year 3	3 Year Total	Annual Average
	Sep. 2001- Aug. 2002	Sep. 2002- Aug. 2003	Sep. 2003- Aug. 2004		
Facilities	87,123	65,246	95,745	248,114	82,705
States and Territories	21,004	14,098	20,390	55,492	18,497
Yearly Total	108,127	79,344	116,135	303,606	101,202

Exhibit A.5 (continued)

Federal Government

Activities	Year 1	Year 2	Year 3	3 Year Total	Annual Average
	Jan. 2003- Dec. 2003	Jan. 2004- Dec. 2004	Jan. 2005- Dec. 2005		
Review of State Modification Request	21	22	0	43	14
Review Annual Reports	147	493	449	1,089	363
General Permit Activities					
Review and approve NOIs	210	28	76	314	105
Individual Permit Activities					
Review Permit Applications/ Public Notification/ Response to Comments/ Issue Permit and Recordkeeping	90	12	33	135	45
Public Hearing	11	1	4	16	5
Facility Inspections	60	68	90	218	73
Total Responses	539	625	652	1,816	605

Exhibit A.6

Annual Hourly Burden for the ICR Approval Period for Respondents

Facilities¹

Activities	Year 1	Year 2	Year 3	3 Year Total	Annual Average
	Jan. 2003-Dec. 2003	Jan. 2004-Dec. 2004	Jan. 2005-Dec. 2005		
Start-up Activities	29,024	3,883	10,572	43,479	14,493
Permit Application Activities					
General Permit Application Requirements	60,950	8,155	22,201	91,306	30,435
Individual Permit Application Requirements	26,122	3,495	9,515	39,131	13,044
NPDES Requirements					
Annual Report	9,675	10,969	14,493	35,137	11,712
Nutrient Management Plan Development	500,990	67,029	182,486	750,505	250,168
Compliance Inspection	7,740	8,775	11,594	28,109	9,370
Record Keeping of Transfers	75,903	93,543	139,127	308,574	102,858
Best Available Technology Requirements					
Visual Inspections	125,771	142,598	188,410	456,779	152,260
Manure Application Equipment Inspection	24,088	29,265	43,361	96,714	32,238
Manure Sampling	21,549	24,433	32,282	78,264	26,088
Soil Sampling	51,758	11,125	30,289	93,172	31,057
ELG and NPDES Record Keeping	773,974	877,526	1,159,446	2,810,947	936,982
Total Burden	1,707,544	1,280,797	1,843,777	4,832,118	1,610,706

1. It is assumed that facilities will begin annual activities in the same year that they apply for permit coverage.

States

Activities	Year 1	Year 2	Year 3	3 Year Total	Annual Average
	Jan. 2003-Dec. 2003	Jan. 2004-Dec. 2004	Jan. 2005-Dec. 2005		
Program Modification Request	5,250	5,500	0	10,750	3,583
Review Annual Reports	37,499	42,516	56,175	136,190	45,397
General Permit Activities					
General Permit Development/ Public notice/ Response to comments/ Public Hearings	27,090	28,380	0	55,470	18,490
Review and Approve NOIs	26,249	3,512	9,561	39,323	13,108
Individual Permit Activities					
Review Permit Applications/ Public Notification/ Response to Comments/ Issue Permit and Recordkeeping	281,243	37,628	102,443	421,314	140,438
Public Hearing	67,498	9,031	24,586	101,115	33,705
Facility Inspections	29,999	34,013	44,940	108,952	36,317
Total Burden	474,829	160,580	237,706	873,114	291,038

Total for Responses (Facilities and States)

	Year 1	Year 2	Year 3	3 Year Total	Annual Average
	Sep. 2001-Aug. 2002	Sep. 2002-Aug. 2003	Sep. 2003-Aug. 2004		
Facilities	1,707,544	1,280,797	1,843,777	4,832,118	1,610,706
States and Territories	474,829	160,580	237,706	873,114	291,038
Yearly Total	2,182,373	1,441,377	2,081,482	5,705,232	1,901,744

Federal Government

Activities	Year 1	Year 2	Year 3	3 Year Total	Annual Average
	Jan. 2003-Dec. 2003	Jan. 2004-Dec. 2004	Jan. 2005-Dec. 2005		
Review of State Modification Request	1,050	1,100	-	2,150	717
Review Annual Reports	588	1,972	1,797	4,357	1,452
General Permit Activities					
Review and approve NOIs	840	112	306	1,258	419
Individual Permit Activities					
Review Permit Applications/ Public Notification/ Response to Comments/ Issue Permit and Recordkeeping	8,997	1,204	3,277	13,479	4,493
Public Hearing	2,159	289	787	3,235	1,078
Facility Inspections	960	1,088	1,438	3,486	1,162

Exhibit A.7

Annual Costs for the ICR Approval Period for Respondents

Labor Costs for Facilities¹

Activities	Year 1	Year 2	Year 3	3 Year Total	Annual Average
	Jan. 2003-Dec. 2003	Jan. 2004-Dec. 2004	Jan. 2005-Dec. 2005		
Start-up Activities	\$633,595	\$84,770	\$230,787	\$949,152	\$316,384
Permit Application Activities					
General Permit Application Requirements	\$1,330,549	\$178,018	\$484,652	\$1,993,218	\$664,406
Individual Permit Application Requirements	\$570,235	\$76,293	\$207,708	\$854,236	\$284,745
NPDES Requirements					
Annual Report	\$211,198	\$239,455	\$316,384	\$767,037	\$255,679
Nutrient Management Plan Development	\$18,150,884	\$2,428,453	\$6,611,457	\$27,190,794	\$9,063,598
Compliance Inspection	\$168,959	\$191,564	\$253,107	\$613,630	\$204,543
Record Keeping of Transfers	\$834,938	\$1,028,978	\$1,530,402	\$3,394,319	\$1,131,440
Best Available Technology Requirements					
Visual Inspections	\$1,383,479	\$1,568,578	\$2,072,510	\$5,024,567	\$1,674,856
Manure Application Equipment Inspection	\$264,964	\$321,917	\$476,973	\$1,063,854	\$354,618
Manure Sampling	\$237,044	\$268,758	\$355,101	\$860,903	\$286,968
Soil Sampling	\$569,336	\$122,378	\$333,174	\$1,024,888	\$341,629
ELG and NPDES Record Keeping	\$8,513,716	\$9,652,788	\$12,753,908	\$30,920,413	\$10,306,804
Total Labor Cost	\$32,868,896	\$16,161,952	\$25,626,164	\$74,657,012	\$24,885,671

1. It is assumed that facilities will begin annual activities in the same year that they apply for permit coverage.

Capital and O&M Costs For Facilities

Item	Year 1	Year 2	Year 3	3 Year Total	Annual Average
	Jan. 2003-Dec. 2003	Jan. 2004-Dec. 2004	Jan. 2005-Dec. 2005		
Capital Costs					
Purchase of the Soil Auger	\$23,394	\$28,422	\$42,113	\$93,929	\$31,310
Engineering Cost for NMP	\$900,252	\$1,093,761	\$1,620,586	\$3,614,599	\$1,204,866
Purchase of a Manure Sampler	\$45,101	\$51,135	\$67,564	\$163,800	\$54,600
Installation of Depth Markers	\$35,086	\$39,780	\$52,560	\$127,426	\$42,475
O&M Costs					
Laboratory Analysis of Soil Sample	\$564,891	\$121,423	\$330,573	\$1,016,887	\$338,962
Laboratory Analysis of Manure Sample	\$1,224,852	\$1,388,728	\$1,834,880	\$4,448,459	\$1,482,820
Other Direct Costs for Record Keeping	\$851,372	\$965,279	\$1,275,391	\$3,092,041	\$1,030,680
Subtotal Capital Costs	\$1,003,833	\$1,213,099	\$1,782,822	\$3,999,754	\$1,333,251
Subtotal O&M Costs	\$2,641,115	\$2,475,429	\$3,440,844	\$8,557,387	\$2,852,462
Total Capital and O&M Costs	\$3,644,948	\$3,688,528	\$5,223,666	\$12,557,141	\$4,185,714

Exhibit A.7 (continued)

States

Activities	Year 1	Year 2	Year 3	3 Year Total	Annual Average
	Jan. 2003-Dec. 2003	Jan. 2004-Dec. 2004	Jan. 2005-Dec. 2005		
Program Modification Request	\$156,345	\$163,790	\$0	\$320,135	\$106,712
Review Annual Reports	\$1,115,597	\$1,264,855	\$1,671,211	\$4,051,663	\$1,350,554
General Permit Activities					
General Permit Development/ Public notice/ Response to comments/ Public Hearings	\$806,740	\$845,156	\$0	\$1,651,897	\$550,632
Review and Approve NOIs	\$781,705	\$104,586	\$284,736	\$1,171,028	\$390,343
Individual Permit Activities					
Review Permit Applications/ Public Notification/ Response to Comments/ Issue Permit and Recordkeeping	\$8,375,413	\$1,120,568	\$3,050,743	\$12,546,724	\$4,182,241
Public Hearing	\$2,010,099	\$268,936	\$732,178	\$3,011,214	\$1,003,738
Facility Inspections	\$893,377	\$1,012,905	\$1,338,317	\$3,244,599	\$1,081,533
Total Labor Costs	\$14,139,277	\$4,780,797	\$7,077,186	\$25,997,260	\$8,665,753
O&M Costs					
Public notice for general permit	\$22,260	\$23,320	\$0	\$45,580	\$15,193
Public notice for individual permit	\$2,981,175	\$398,859	\$1,085,892	\$4,465,926	\$1,488,642
Public notice for public hearing	\$357,741	\$47,863	\$130,307	\$535,911	\$178,637
Total O&M Costs	\$3,361,175	\$470,042	\$1,216,199	\$5,047,417	\$1,682,472

Total for Responses (Facilities and States)

Item	Year 1	Year 2	Year 3	3 Year Total	Annual Average
	Sep. 2001-Aug. 2002	Sep. 2002-Aug. 2003	Sep. 2003-Aug. 2004		
Facilities Labor Costs	\$32,868,896	\$16,161,952	\$25,626,164	\$74,657,012	\$24,885,671
States and Territories Labor Costs	\$14,139,277	\$4,780,797	\$7,077,186	\$25,997,260	\$8,665,753
Subtotal Respondent Labor Costs	\$47,008,172	\$20,942,749	\$32,703,350	\$100,654,271	\$33,551,424
Respondent Capital and O&M Costs	\$7,006,124	\$4,158,570	\$6,439,865	\$17,604,559	\$5,868,186
Yearly Total	\$54,014,296	\$25,101,319	\$39,143,215	\$118,258,830	\$39,419,610

Federal Government

Activities	Year 1	Year 2	Year 3	3 Year Total	Annual Average
	Jan. 2003-Dec. 2003	Jan. 2004-Dec. 2004	Jan. 2005-Dec. 2005		
Review of State Modification Request	\$41,937	\$43,934	\$0	\$85,871	\$28,624
Review Annual Reports	\$23,478	\$78,761	\$71,778	\$174,017	\$58,006
General Permit Activities					
Review and approve NOIs	\$33,540	\$4,487	\$12,217	\$50,244	\$16,748
Individual Permit Activities					
Review Permit Applications/ Public Notification/ Response to Comments/ Issue Permit and Recordkeeping	\$359,358	\$48,079	\$130,896	\$538,334	\$179,445
Public Hearing	\$86,246	\$11,539	\$31,415	\$129,200	\$43,067
Facility Inspections	\$38,332	\$43,460	\$57,422	\$139,214	\$46,405
Total Cost	\$582,891	\$230,261	\$303,728	\$1,116,880	\$372,293

Exhibit A.8**Summary of the Burden, Respondents, Responses, and Costs for the ICR Approval Period by Year and Annual Averages****Facilities**

Item	Source (Exhibit)*	Year 1	Year 2	Year 3	Three Year Total	Annual Average
		Jan. 2003- Dec. 2003	Jan. 2004- Dec. 2004	Jan. 2005-Dec. 2005		
Net Burden (hours) ¹	A6	1,707,139	1,280,797	1,843,777	4,831,713	1,610,571
Respondents (number)	A4	9,675	10,969	14,493	35,137	11,712
Responses (number)	A5	87,123	65,246	95,745	248,114	82,705
Net Costs (labor) ¹	A7	\$32,860,055	\$16,161,952	\$25,626,164	74,648,171	24,882,724
Costs (Capital)	A7	\$1,003,833	\$1,213,099	\$1,782,822	\$3,999,754	\$1,333,251
Costs (O&M)	A7	\$2,641,115	\$2,475,429	\$3,440,844	\$8,557,387	\$2,852,462
Total Costs		\$36,505,003	\$19,850,480	\$30,849,830	\$87,205,312	\$29,068,437

States

Item	Source (Exhibit)*	Year 1	Year 2	Year 3	Three Year Total	Annual Average
		Jan. 2003- Dec. 2003	Jan. 2004- Dec. 2004	Jan. 2005-Dec. 2005		
Net Burden (hours) ¹	A6	474,784	160,580	237,706	873,114	291,038
Respondents (number)	A4	21	22	43	86	29
Responses (number)	A5	21,004	14,098	20,390	55,492	18,497
Net Costs (Labor) ¹	A7	\$14,137,937	\$4,780,797	\$7,077,186	\$25,997,260	\$8,665,753
Costs (O&M)	A7	\$3,361,175	\$470,042	\$1,216,199	\$5,047,417	\$1,682,472
Total Costs		\$17,499,112	\$5,250,839	\$8,293,385	\$31,044,677	\$10,348,226

Totals for Respondents (Facilities and States)

	Three Year Total	Annual Average
Total Respondent Burden (hours)	5,704,827	1,901,609
Total Respondents (number)	35,223	11,741
Total Responses (number)	303,606	101,202
Total Respondent Labor Costs	\$100,645,430	\$33,548,477
Total Respondent Capital and O&M Costs	\$17,604,559	\$5,868,186
Total Respondent Cost for All Activities	\$118,249,989	\$39,416,663

1. The application burden for 45 individual permits has been included in the earlier Applications ICR, which expires after April 30, 2003. The amount of burden accounted for in the Applications ICR has been removed from these burden estimates (9 hours per application for CAFOs and 1 hour per application for States).

Exhibit B
Respondent Compliance Schedule Estimates

Facility/State Estimates for year 2000	NPDES Rule and ELG Rule Compliance Periods											
	Initial 3-Year ICR Approval Period					First Renewal Period			Second Renewal Period			
	2003	2004	2005	3 year		2006	2007	2008	2009	2010	2011	2012
	Jan- Dec	Jan-Dec	Jan-Dec	Total		Jan-Dec	Jan-Dec	Jan-Dec	Jan-Dec	Jan-Dec	Jan-Dec	Jan-Dec
TIMING ASSUMPTIONS												
Already permitted ¹	4,128	50.0%	50.0%	50.0%	150.0%	50.0%	0.0%					
No longer exempt ²												
>1000	4,162	100.0%	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	0.0%	0.0%	0.0%
300-1000	na											
New permits												
>1000 ²												
Dry poultry	2198	0.0%	0.0%	100.0%	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%
Immature animals	254	0.0%	0.0%	100.0%	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%
New medium (immature animals)	234	0.0%	0.0%	100.0%	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%
Facilities 300-1000 Impacted	4,219	100.0%	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	96.9%	0.0%	0.0%
Designated small CAFOs ³	172	20.0%	20.0%	20.0%	60.0%	20.0%	20.0%	40.0%	40.0%	40.0%	40.0%	40.0%
State/Territory (start-up)	43	49.0%	51.0%		100.0%							
RESULTING ESTIMATES												
Already permitted ¹	4,128	1,260	1,260	804	3,324	804	-	1,260	1,260	804	804	-
No longer exempt ²												
>1000	4,162	4,162	-	-	4,162	-	-	4,162	-	-	-	-
300-1000	na											
New permits												
>1000 ²												
Dry poultry	2,198	-	-	2,198	2,198	-	-	-	-	2,198	-	-
Immature animals	254	-	-	254	254	-	-	-	-	254	-	-
New medium (immature animals)	234	-	-	234	234	-	-	-	-	234	-	-
Facilities 300-1000 Impacted	4,219	4,219	-	-	4,219	-	-	4,219	-	4,088	-	-
Designated CAFOs ³	172	34	34	34	103	172	172	206	206	34	103	172
Facility Totals	15,367	9,675	1,294	3,524	14,494	976	172	5,628	1,466	3,524	907	172
Facilities without land application		3,653	-	-								
State/Territory (start-up)	43	21	22		43							

1. For the 2,520 CAFOs permitted before 2000, assumes a uniform repermitting distribution over two years (50% per year). For the 1,608 additional CAFOs permitted before 2003, assumes a uniform repermitting in 2005 and 2006 (50% per year).

2. Assumes that no longer exempt CAFOs and all unpermitted facilities in EPA authorized States apply in year one, while all other new CAFOs in apply in the third year.

3. EPA assumes that 172 Medium and Small AFOs are designated CAFOs during the first five years after rule promulgation.